



ఆంధ్రప్రదేశ్ రాజపత్రము
THE ANDHRA PRADESH GAZETTE
PUBLISHED BY AUTHORITY

W.No.3

AMARAVATI, SATURDAY, JANUARY 18, 2025

G.747

PART II - MISCELLANEOUS NOTIFICATIONS OF INTEREST TO THE PUBLIC

--X--

**NOTIFICATIONS BY HEADS OF DEPARTMENTS Etc.,
I ADDL. SENIOR CIVIL JUDGE'S COURT (SENIOR DIVISION)
GUNTUR**

REVGNT-ASEC0GZ(PUBC) / 1 / 2024 - JA(A5) - COLGNT.

Dt: 03/01/2025

**GUNTUR DISTRICT - COURT ORDER IN CERTAIN INSOLVENCY PETITIONS
IN SEVERAL I.P. NOS.**

S.I.No.	I.P.No.	Dis No.& date
1.	76/2021	2341, dt: 21.12.2024
2.	69/2021	2339, dt: 21.12.2024
3.	16/2017	2343, dt: 21.12.2024
4.	13/2021	2338, dt: 21.12.2024
5.	32/2023	2342, dt: 21.12.2024
6.	50/2020	2340, dt: 21.12.2024

INSOLVENCY PETITION NO.76/2021**Between:**

Myneni Venkateswara Rao, S/o Subba Rao, Hindu, aged about 37 years, Business, R/o Sai Raj Towers, S.V.N. Colony, Guntur.

...
AND

PETITIONER.

1. Yendluri Subba Rao @ Subbaiah, S/o Bapanaiah, Hindu, aged about 52 years, R/o Flat No.404, Aditya Enclave, Balaji Nagar, 5th Line, Guntur.
2. Gangineni Venkata Rama Rao, S/o Koteswara Rao, Hindu, aged about 50 years, R/o K.V.C. Heights, Flat No.301, Kommineni Nagar, 3rd Line, Vidya Nagar Extension, Gorantla, Guntur.
3. Gangavarapu Prabhavathi, W/o Joseph Kumar, Hindu, aged about 44 years, R/o D.No.2-16-141, 8th Line, Shyamala Nagar, Guntur.
4. The Official Receiver, District Court Compound, Guntur.

...

RESPONDENTS.

This petition coming on 15.7.2024 for final hearing before me in the presence of Sri K. Venkata Rao, Advocate for petitioner and Respondents 1 to 3 remained exparte, and the matter having stood over for consideration till this day, this Court made the following:-

:: ORDER ::

1. This insolvency petition is filed for the following reliefs:
 - i) to adjudge the first respondent as insolvent,

- ii) to declare the item no. 1 registered sale deed registering bearing no. 7755/2021 of SRO, Vinukonda, which was registered on 4.8.2021, in favour of second respondent in respect of the schedule property and the first respondent, as executed, the item no. 2 sale deed bearing no. 7754/2021 in favour of the third respondent, SRO, Vinukonda, Guntur District, as fraudulent, and to cancel the same.
- iii) to appoint respondent/official receiver, Guntur, as interim receiver to take possession of the petition schedule property and to distribute the same among the general body of his creditors.
- v) for costs and
- iv) to pass such other as the Court deems fit and proper in the circumstances of the case.

2. The main case of the petitioner, in brief, is that,

- i) The first respondent is the absolute owner of the schedule property. He borrowed Rs. 9,00,000/- from the petitioner on 9.10.2019 for the purpose of his family expenses and executed a promissory note, agreeing to repay the same with interest at 24% p.a. Despite repeated demands, the first respondent failed to discharge the due amount. While so, the first respondent, colluded with respondents 2 and 3, executed registered sale deeds dated 4.8.2021 in favour of respondents 2 and 3 without consideration, with an intend to defraud the petitioner.
- ii) Except schedule property, first respondent has no other properties. Hence, he urged the court to adjudge the first

respondent as insolvent and declare registered sale deeds Doc. Nos. 7755/2021 and 7754/2021 fraudulent and cancel the same.

3. Despite service of notices, respondents 1 to 3 did not appear before the court. Hence, they were set exparte.

4. **Now the points for determination are:**

1. Whether the first respondent committed an act of insolvency; if so, is he liable to be adjudged as insolvent?

2. Whether sale deeds bearing nos. 7755/2021 and 7754/2021 dt.4.8.2021 should be annulled as prayed for?

5. At the event of enquiry, the petitioner examined P.W.1, while relying on Exs. P1 to P3.

6. Heard arguments on both sides.

7. Perused the record.

P O I N T N O . 2 :-

2. Whether sale deeds bearing nos. 7755/2021 and 7754/2021 dt.4.8.2021 should be annulled as prayed for?

8. It is the case of the petitioner that, to defeat and delay his claim, the first respondent executed a sham and nominal sale deed dt. 4.8.2021 and therefore, they are liable to be annulled.

9. In view of the rival contentions of both parties, this Court has to examine whether the Insolvency Court can annul a

sale deed transaction simultaneously with the adjudication of the insolvent. To decide this question, it is desirable to read the provisions of the Provincial Insolvency Act¹, more particularly Sections 53, 54, and 54-A of the Act.

10. Section 53 of the Act envisages that any voluntary transfer made by the debtor if the transferor is adjudged as insolvent can be avoided. Section 54 of the Act enumerates that every transfer of property, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as he become due from his own money in favour of any creditor and giving preference over the other creditors, and if such person is adjudged insolvent on a petition presented, shall be deemed to be fraudulent and void against the receiver and shall be annulled by a Court saving transaction entered into in good faith and for valuable consideration.

11. A fraudulent transfer under Section 53 of the Act and a transaction to give fraudulent preference under Section 54 of the Act are void against the receiver, and they shall be annulled on the petition filed within a specific time. Section 54-A of the Act specifies the procedure for annulment of any transfer under Sections 53 or

1 For brevity, "the Act"

54 of the Act. According to it, for annulment of any transfer under Sections 53 or 54 of the Act, a petition may be presented by a receiver, or with the leave of the Court, by any creditor who has proved his debt and who satisfies the Court that the receiver has been requested and has refused to make such a petition.

12. In view of the language used in Sections 53 and 54 of the Act, more particularly, the words "*if the transferor is adjudged insolvent*" under Section 53 of the Act and "*if the person is adjudged insolvent*" under Section 54 of the Act indicate that, for annulling a transaction of transfer, the debtor must be adjudged insolvent.³ So, to annul a transaction of transfer, a pre-condition is adjudging the debtor as insolvent. It is more clear from the following jurimetrical jurisprudence.

13. In *Tadikamalla Venkata Ramana Kishore and another Vs. P.Santhakumari and others*², the Hon'ble composite High Court held at para no.25 as follows:

25. In the instant case, by the date of filing the petition, seeking annulment under Section 53 or 54 of the Act, the petitioner was not even adjudged as insolvent. So, the first condition was not satisfied. The petitioner did not approach the Official Receiver and proved his debt as contemplated under Part-III of the Act and complied

Section 54-A of the Act. Thereby, the order annulling the sale transaction covered by sale deeds dated 10.03.2004 vide document Nos.2605 of 2004 and 2606 of 2004 passed by the trial Court as confirmed by the appellate Court, is erroneous ex facie and contrary to provisions of Act. Hence, the orders of the trial Court and the appellate Court to the extent of annulling the sale deeds dated 10.03.2004 vide document Nos.2605 of 2004 and 2606 of 2004, is illegal and the same is liable to be set aside. However, the petitioner is at liberty to move an application after compliance of Sections 45 to 50 and 54-A of the Act to annul the transfer of immovable property under Sections 53, 54 or 4 of the Act.

14. In Dara Mohan Muralidhar and Others Vs. B.Nirmala Devi and another³, the Hon'ble Composite High Court held at para no.31 as follows,

[31]³ This Court held that the transaction covered by any registered document amounts to an act of insolvency under Section 6(1)(b) of the Act. It cannot be annulled except on an application filed under Sections 53 and 54 of the Act after compliance of procedure prescribed under Sections 45 to 50 and 54-A of the Act.

15. A conspectus of the above authorities is that, unless the debtor is adjudged as insolvent, the next stage of proof of debt as

contemplated under sections 45 to 50 and 54-A of the Act does not arise. After proof of debt, on an application filed under Sections 53 and 54 of the Act, a separate enquiry will be conducted on the annulment of a register document by complying with procedure.

16. In the present case, this petition is filed to adjudge the first respondent as insolvent and annul the registered sale deed bearing nos. 7755/2021 and 7754/2021 dt.4.8.2021/Exs.P1 and P2 executed in favour of the respondents 2 and 3, separately. Thus, he sought two reliefs simultaneously, and the relief claimed by the petitioner/creditor with regard to annulment of the sale deeds transaction is against the spirit of the language used under Sections 53 and 54-A of the Act. In view of the above authorities, at this stage, the registered sale deeds bearing nos. 7755/2021 and 7754/2021 dt. 4.8.2021 cannot be annulled. There is a separate procedure, laid down under Sections 53, 54, and 54-A of the Act. Accordingly, this point is answered.,

P O I N T No. 1:

1. Whether the first respondent committed an act of insolvency; if so, is he liable to be adjudged as insolvent?

17. This petition is filed by the creditor under Section 9 of the Provincial Insolvency Act to adjudge the first respondent as insolvent. In view of the claim of the petitioner, it is appropriate to

examine Section 9 of the Act, which deals with creditor insolvency petition. The said provision reads as follows:

9. Conditions on which creditor may petition.—(1) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

(a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and

(b) the debt is a liquidated sum payable either immediately or at some certain future time, and

(c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition:

Provided that where the said period of three months referred to in clause (c) expires on a day when the Court is closed, the insolvency petition may be presented on the day on which the Court re-opens.

(2) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent, or give an estimate of the value of the security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

18. The above provision mandates compliance with three conditions: one is that a debt of Rs. 500/- or more is owed to a creditor or two or more creditors; second is that such debt is a liquidated sum payable immediately or at a certain future time; and

third is that the petitioner shall file the petition before the expiration of three months from the date of the act of insolvency.

19. In so far as compliance of first and second requirements under Section 9 of the Act, it is the case of petitioner that the first respondent borrowed Rs. 9,00,000/- on 09.10.2019 for the purpose of his business and executed a promissory note, agreeing to repay the same along with interest at 24% p.a.

20. In order to comply with the first and second requirements under Section 9 of the Act, the burden of proof is upon the petitioner to prove that the first respondent borrowed amount and was indebted to the petitioner. In order to prove the case, the petitioner examined himself as PW1. He reiterated the averments of petition in his chief examination affidavit. Respondents failed to cross-examine Pw 1. Thereby, his evidence is unchallenged.

21. Besides the above oral evidence, he relied on documentary evidence, more particularly judgment and decree in OS 579 of 2021 (Ex.P3) on the file of II Addl. Civil Judge (Jr. D.), Guntur. It reveals that petitioner herein filed a suit against first respondent for recovery of money on foot of promissory note, and obtained decreed against him. Thus, debt is proved through the judgment and decree.

22. The evidence of Pw 1 and Ex.P3 establishes the lending amount, execution of promissory note, and first respondent is indebted to the petitioner. After thorough scrutiny of the evidence of Pw1, this court has not found any circumstances to doubt the case of petitioner. Hence, it is held that the petitioner established that the first respondent is indebted to him through his oral and documentary evidence. Thereby, the petitioner complied with the first and second requirements of Sec. 9 of the Act stated above.

ACT OF INSOLVENCY:

23. As far as the third requirement is concerned, an insolvency petition shall be filed within 3 months from the date of act of insolvency. According to the petitioner, the first respondent committed an act of insolvency by executing a sale deeds of schedule in favour of respondents 2 and 3, intending to defeat and defraud his claim. In view of the contentions of petitioner, the question before the court is whether the execution of sale deeds amounts to an act of insolvency or not.

24. Section 6 of the Act envisages an act of insolvency. The entire Section 6 is not relevant to the creditor insolvency petition. But Section 6(1) (a) to (e) is relevant. As far as the present case is concerned, Section 6(1)(a) and (b) are most relevant.

25. To adjudge the debtor as insolvent, the petitioner (creditor) shall establish the act of insolvency laid down under Section 6(1)(a) and (b) of the Act. For a better appreciation of the case, relevant provision is reproduced hereunder:

6. Acts of insolvency.—(1) A debtor commits an act of insolvency in each of the following cases, namely:—

(a) if, in India or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally;

(b) if, in India or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;

26. As far as Section 6(1)(a) is concerned, the meaning of transfer of benefit to creditors generally is that it transfers all or substantially all of his property to a third person for the benefit of his creditors generally or to composite debtors executing for the purpose of paying creditors. This situation arises when any transfer is made to a third party for the benefit of creditors generally, as covered under (a) of the Act.

27. As seen from the sale deeds/Exs. P1 and P2, property was not transferred to creditors of the first respondent as envisaged under Section 6(1)(a) of the Act. So, Section 6(1)(a) is not applicable to the present case.

28. As per Section 6(1)(b) of the Act, where a transfer of property or any part thereof is made with intent to defeat or delay his creditors, it amounts to an act of insolvency. In the present case, the petitioner would contend that the first respondent executed a sale deed bearing nos. 7755/2021 and 7754/2021 dt. 4.8.2021 in favour of respondents 2 and 3 with fraudulent intention to defeat his claim, and thereby, the first respondent committed an act of insolvency. So, this provision is relevant to the present case.

29. It is already stated above that the petitioner established the debt of the first respondent. It is not in dispute that the first respondent executed a sale deeds in favour of respondents 2 and 3. But the first respondent did not discharge the whole or any part of the debt, even after the sale transactions. Thus, the debt of first respondent due to the petitioner remains in existence even after the sale deed/original of Exs. P1 and P2. Instead of repaying the debt, the first respondent alienated his property under a registered sale deeds without discharging a promissory note.

30. All the above facts go to show the conduct of the first respondent that he alienated the property to defeat and defraud the petitioner.

Finding on the act of insolvency:

31. All the above facts and circumstances establish that the act of first respondent in executing the register registered sale deeds/Exs. P1 and P2 without discharging the promissory note debt stated above constitutes an act of insolvency as envisaged under Section 6(1)(b) of the Act.

LIMITATION:

32. Sale deeds/Exs. P1 and P2 were executed on 4.08.2021, whereas the present I.P. was filed on 23.10.2021, vide C.F.R. No. 3800/23.10.2021. A creditor insolvency petition must be presented within three months from the date of the act of insolvency (alienation of property). The dates of sale deed (act of insolvency) and date of presentation of the present IP stated above establish that the present IP is presented within limitation.

33. In view of the above facts and circumstances, it is held that the first respondent is liable to be adjudged as insolvent. Accordingly, this point is settled.

RESULT:

34. In the result, the petition is allowed partly by adjudging the first respondent as insolvent. The period of discharge is six months from the date of this order. The petitioner is at liberty to move an application, after compliance with Sections 45 to 50 and

54-A of the Act, to annul the transfer of immovable property under Sections 53, 54, or 4 of the Act. The petition schedule property is vested with Official Receiver. The office is directed to send a copy of this order to the District Collector, Guntur, for making a Gazette notification in compliance with Section 30 of the Provincial Insolvency Act.

Typed to my Dictation, corrected and pronounced by me in the Open Court, on this the 22nd day of July, 2024.

Y. GOPALA KRISHNA,
I Addl. Civil Judge (Senior Division),
Guntur.

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

For Petitioner:

P.W.1 : Myneni Venkateswara Rao

For Respondents:

None DOCUMENTS MARKED

For Petitioner:

Ex.P1 : Certified copy of registered sale deed vide Doc.No.7755/2021, dt.4.8.2021.

Ex.P2 : Certified copy of registered sale deed vide Doc.No.7754/2021, dt.4.8.2021.

Ex.P3 : Certified copy of decree and judgment in O.S.579/2021 on the file of II ACJ (Jr.D), Guntur.

For Respondents:

- NIL-

Y. GOPALA KRISHNA,
I Addl. Civil Judge (Senior Division),
Guntur.

Dis No - 2341

INSOLVENCY PETITION NO.69/2021**Between:**

Shaik Meera Jani, S/o Mahabub Subhani, Muslim, aged about 46 years, business, D.No.65-19-1979, Mugdhum Nagar 3rd line, Guntur town and District.

...PETITIONER.

AND

1. Shaik Mahaboob Basha, S/o Gaffar Baig, business, Muslim, aged about 32 years, D.No.65-10-1028, Anandapet 10th line, beside Panchavati Apartment, Guntur Town.
2. Shaik Rehman S/o Usman, Business, Muslim, aged about 32 years, D.No.65-20-1830, Magdum Nagar 4th line, Opposite to Ayesha Maseed, Guntur Town.
3. Pathan Aleem Basha, S/o Chan Basha, Goldsmith, Muslim, aged about 35 years, R/o D.No.59-6-842, Thamma Ranga Reddy Nagar 4th line, Old Guntur, Guntur Town.
4. Ghulam Gouse Raza Shaik Mohammad, S/o Shaik Ibrahim, Business, Muslim, aged about 35 years, R/o D.No.19-8-102/A, Ram Raheem Colony, Chakali Gunta, near Mazeed, Etukuru Road, Guntur Town.
5. Bale Srinivasa Rao, S/o Sambaiah, Hindu, aged about 49 years, business, D.No.25-17-179, 60 feet road, Srinivasaraopet, Guntur Town.
6. India Bulls Dhani Loan & Service Limited represented by its Manager, Ashok Bhopal Campus-305, 3rd floor, SP Road, Begumpet, Secunderabad, Telangana State.
7. Lendingkart Finance Limited represented by its Manager, A 303/304 City Point, Andheri Kurla road, Andheri East, Mumbai, Maharastra.
8. Ambit House (Registered Office) Ambit Pvt Ltd., represented by its Manager, Ambit House-449, Senapati Bapat Marg, Lower Parel, Mumbai, Maharastra.

9. HDFC Bank Limited represented by its Manager, D.No.40-6/2-13, 1st floor, Kanakamedala Seshagiri Street, Revenue Colony, Moghalrajpuram, Vijayawada, Krishna District.

...RESPONDENTS.

This petition coming on. 26.6.2024 for final hearing before me in the presence of Sri S.B. Tajuddin, Advocate for petitioner and Sri V. Nageswara Rao, Advocate for R6; R1 to R5, R7 to R9 having remained exparte; and the matter having stood over for consideration till this day, this Court made the following:-

:: O R D E R ::

1. This insolvency petition is filed under Section 10 of the Provincial Insolvency Act¹ to adjudge the petitioner as insolvent.
2. The main case of the petitioner, in brief, is that,
 - i) Petitioner is a resident of Mugdhum Nagar, Guntur. He used to do business in the name and style of Sahara cell solutions at Bara Imam Panja Street, Ponnur Road, Guntur Town. During business and to improve the business, he borrowed amounts from the respondents and invested the same in the business. Further, he used to purchase material from the commission agents on cash and sold the same in retail and other retail shops as well. But due to heavy competition in the market, he incurred heavy losses. It led

1 For brevity, "the Act"

him to believe that he is not in a position to repay the debts to the respondents.

ii) While borrowing amounts from the respondents for business purposes, he executed promissory notes and cheques as security. However, he paid huge amounts towards interest to the respondents. But due to his financial crises, he could not rotate money properly, resulting in him not being able to discharge the debts incurred by him.

iii) Taking advantage of his financial position, some of the respondents used to threaten him to discharge the debts. In view of the circumstances, he again borrowed some hand loans from his near and dear. But he could not discharge the loans, resulting in a loss to the tune of Rs. 43,81,671/-. Due to financial problems, he has no other option, except giving blank signed cheques, and promissory notes to the respondents as security. Some of the respondents are under the influence of anti-social elements, politicians and the police. All the respondents are adopting forcible and violent measures against the petitioner. In fact, he is not in a position to discharge the debts. Hence, he urged the court to adjudge the petitioner as insolvent.

3. On the other hand, the sixth respondent resisted the claim of petitioner by filing a counter. The main case of the 6th respondent, in brief, is that:

i) It is indulged in financial services, duly registered. It has permission from the concerned for conducting financial transactions. Petitioner is one of its customers and availed financial services by executing all necessary documents, etc.

ii) The 6th respondent is a company incorporated under the Companies Act. Therefore, this I.P. is not maintainable under Sec. 8 of the Provincial Insolvency Act. Hence, he urged the court to dismiss the petition.

4. **Now the point for determination is:-**

"Whether the petitioner is entitled to be declared as insolvent as prayed for?"

5. During course of enquiry, the petitioner examined PWs 1 and 2, while relying upon Ex.P1. On the other hand, respondents did not adduce any evidence.

6. Heard arguments.

7. Perused the record.

POINT :-

8. Learned counsel for 6th respondent questioned the maintainability of this I.P. against companies including 6th

respondent. Since learned counsel questioned the maintainability of this I.P., it is appropriate to discuss the same before appreciating the above point.

9. As seen from the petition, it reveals that respondents 6 to 9 are companies. Their nature and status are not disputed by either of the parties. Now the question before the court is, whether an insolvency petition is maintainable against companies or corporations like respondents 6 to 9.

10. Sec. 8 of the Act would answer the above question. It enumerates the "*exemption of corporation etc., from insolvency proceedings.*" It is worthwhile to reproduce the provision hereunder:

"8. Exemption of corporation, etc. from insolvency proceedings:- No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force."

11.. A plain reading of the above provision makes it manifest that an insolvency petition filed against the company is not maintainable in view of the exemption of companies/corporate from insolvency proceedings. Thus, the provision declares the

exemption of corporations, etc., from insolvency proceedings². In Indian Overseas Bank Vs. Popuri Veeraiah and another³, the Hon'ble Composite High Court held at Para No.11 as follows:

11. On a bare reading of the above Section, it is quite apparent that the corporation or the associations or companies registered under any enactment in force are exempted from being proceeded against. Therefore, it is not explained as to how and why the respondent No. 1 has included the petitioner as one of the creditors in the insolvency petition under Section 10 of the Provincial Insolvency Act, 1920. Therefore, under the scheme of the Provincial Insolvency Act, 1920, having regard to such a specific exemption given under the aforesaid provision, it cannot be said that a bank, which is a registered company can fall well within the mischief of the creditor for the purpose of the said Act. Therefore, the question of invoking the provisions of the Insolvency Act against petitioner bank does not arise nor is valid. Therefore, the very application as has been framed and filed purportedly under Section 10 of the Provincial Insolvency Act, 1920, against the petitioner is not maintainable.

12. In view of the above jurimetrical jurisprudence, the question of initiating any insolvency proceedings against companies or corporations is neither sustainable nor valid, having regard to the exemption provided under the Act. In the present case, respondents 6 to 9 are companies. In view of the above

² S. Prabhakar Reddy vs Busi Reddy Gari Nageswar Reddy and Others in C.M.A.No.840 OF 2005 on 31 December, 2020.

³ 2009(4) ALT 365

provision and authorities, the present insolvency petition is not maintainable against respondents 6 to 9.

13. In so far as the petition against other respondents is concerned, this petition is filed under Section 10 of the Act. So, it is necessary to go through the prerequisites laid down under Section 10 of the Act to enable the debtor to file a petition. The relevant portion of Section 10(1) reads as follows:

Sec.10 (1): "A debtor shall not be entitled to present an insolvency petition, unless he is unable to pay his debts."

14. The very beginning words of section 10(1) enunciate that, inability to pay the debts is SINE QUA NON for filing insolvency petition by the debtor.

15. Section 24 deals with 'procedure at hearing'. The relevant portion of section 24 reads as follows:

Sec.24 (1): "On the date fixed for hearing of the petition, the court shall require proof of the following matters:

(a) The creditor or debtor, as the case may be, is entitled to present the petition.

Provided that, where the debtor is the petitioner, he shall, for the purpose of proving his inability to pay his debts, be required to furnish only such proof as to satisfy

the Court that there are prima facie grounds for believing the same.

Sec.24 (2): The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon."

16. When I.P. filed by the debtor shall be dismissed as laid down under section 25(2) of Provincial Insolvency Act, reads as follows:

"The Court shall dismiss the petition if it is not satisfied of his right to present the petition."

17. On a combined reading of Sections 10, 24 and 25(2), it is abundantly clear that the petitioner/debtor is not entitled to be declared as insolvent merely for asking it, and the Court has to verify the existence of prima facie grounds for considering the plea of the debtor to declare him as an insolvent.

18. At this juncture, it is relevant to go through Judgments of our own High Court. In **Dasari Srihari Rao Vs Talluri**

Harinadha Babu⁴, wherein the Hon'ble Division bench of our High Court succinctly held as follows:

"The debtor, who files an application to adjudge him as insolvent is under an obligation to satisfy the Court, by furnishing necessary information and any failure in that regard would entail in rejection of the application under Section 25 (2) of the Act."

19. In **Kota Sivarama Prasad Vs. Shaik Mastan Vali and another⁵**, the Hon'ble High Court held that,

A debtor cannot be declared as insolvent, unless he establishes satisfactorily by conclusive prove that he is unable to pay debt.

20. In **Chittineni Mobana Rao Vs Jagarlmudi Subbarao⁶**, the Hon'ble High Court held that,

The proposed insolvent has only to satisfy the court as to existence of prima facie grounds which in turn must disclose that the assets held by him are not adequate to meet the liabilities.

21. In **T.Chandraskharaiah Vs. D.Sreramulu Chetty and others⁷**, the High Court was pleased to examine the

4 2002 (3) ALD 456

5 2014 (3) ALT 602

6 2010 (6) ALD 514

7 2005 (1) ALT 407

provisions of Insolvency Act extensively with emphasizing on Sec.10 and Sec.24 of the Provincial Insolvency Act. Ultimately, it was held that,

even though the petitioner, who seeks himself to be declared as an Insolvent need not prove his case beyond reasonable doubt, but he should lead evidence and or place prima facie material before the Court, so as facilitate the Court to reach to conclusion that he is an Insolvent. He should place all such material before this court which would prima facie show that there exist grounds to believe that he is unable to discharge the debts of the respondents, and he became insolvent.

22. On the touchstone of the above legal principles, this Court now proceeds to test the case of the petitioner/debtor. It is the case of petitioner that he used to do business in the name of Sahara Cell Solutions, and for the development of the business, he borrowed amounts from the respondents and invested the same in the business and due to heavy competition, he incurred losses in the business. Further, it is his case that he could not rotate the amount, resulting in the fact that he could not discharge the debts incurred by him. Now he is not in a position to discharge the debts.

23. In order to substantiate his case, the petitioner examined himself as PW1. He reiterated the averments of petition.

in his chief examination affidavit. 6th respondent cross-examined him. In the cross-examination, he testified that his children are pursuing studies and his brother is spending money for the education of his son. At present, he is living in the house of his younger brother. He further stated that in the year 2008, he started the cell phone business and borrowed Rs. 2,00,000/- from the 6th respondent.

24. Besides the above, the petitioner examined Vallamsetty Naga Gopinath as PW2. He supported the case of petitioner by testifying in his chief examination affidavit that the petitioner sustained heavy losses in the cell phone business due to heavy competition, owing to which he could not repay the debts. Further, he testified that at the time of taking loans, the petitioner gave blank signed promissory notes and cheques as security to the respondents. But taking advantage of the financial position of the petitioner, some of the respondents adopted illegal methods against him. 6th respondent cross-examined him. In the cross-examination, he deposed that he is a neighbour of the petitioner and he knows the particulars of petitioner's debts, but he is not a partner of the petitioner's business.

25. In addition to the above, the 6th respondent put his defence by way of suggestions. Of course, PWs 1 and 2 denied the same.

26. To comply with mandatory requirements U/Sec. 10(1) of the Act, the petitioner shall establish that his debts exceed his properties. He showed particulars of debts in A-schedule. It is noteworthy to reproduce petition A-schedule hereunder:

'A' schedule

Sl.No	Name	Nature of the debt	Amount due in Rs.
1.	Shaik Mahaboob Basha	Pronote	Rs.5,00,000-00
2.	Shaik Rahama	Pronote	Rs.2,00,000-00
3.	Pathan Aleem Basha	Pronote	Rs.2,00,000-00
4.	Ghulam Gouse Raza Shaik Mohammad	Pronote	Rs.4,00,000-00
5.	Bale Srinivasa Rao	Pronote	Rs.7,00,000-00
6.	India Bulls Dhani Loan & Service Limited, Secunderabad	Loan Due (1 blank signed cheque)	Rs.63,021-00
7.	Lendingkart Finance Limited, Mumbai	Loan Due (5 blank signed cheques)	Rs.4,26,636-00
8.	Ambit Finvest (SME Business Loans), Mumbai	Loan Due (13 blank cheques)	Rs.9,24,460-00
9.	HDFC Bank Ltd., Vijayawada	Loan Due(1 Blank signed cheque)	Rs.9,67,554-00
		TOTAL :	Rs.43,81,671-00

27. Thus, the petitioner furnished particulars of debts, such as particulars of creditors, nature of debt, quantum of

amount, etc. Though PWs 1 and 2 were cross-examined at length, the debts shown in the A-schedule are not disputed. On through scrutiny of evidence of PWs 1 and 2, this court has no doubt about petition A-schedule.

28. Simply establishing the fact that the petitioner is indebted a huge amount does not suffice to adjudge him as insolvent unless his properties are less than her liabilities. He showed his properties in B-schedule. Immovables, bank sureties, debtors, and cash on hand exhibited in petition B1 to B4 schedules are shown as nil, while movable properties are shown in B5-schedule worth about Rs.500/-. It is not the case of respondents that the petitioner has some other properties and screened the same. Except taking such, they have not furnished particulars of those properties. Further, they have not placed any material exhibiting that the petitioner has some other properties. Therefore, petition B-schedule cannot be doubted. Thus, it is clear from petition 'A' and 'B' schedules that the debts and liabilities of the petitioner are greater than the property shown in the petition 'B' schedule. Thereby, the petitioner complied with mandatory requirements under Section 10(1) of the Act to adjudge her as insolvent.

29. In the light of the aforesaid facts and circumstances, it is held that the petitioner is entitled to be adjudged as insolvent. Accordingly, this point is answered.

30. In the result, the petition is partly allowed against respondents 1 to 5 by adjudging the petitioner as insolvent by giving him six months to discharge. All his properties are vested with the Official Receiver to deal with them according to the provisions of the Provincial Insolvency Act, 1920. The office is directed to send a copy of this order to the District Collector, Guntur, for Gazette publication in compliance with Sec. 30 of the Provincial Insolvency Act.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the Open Court, on this the 4th day of July, 2024.

Y. GOPALA KRISHNA,
I Addl. Civil Judge (Senior Division),
Guntur.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Petitioner:-

P.W.1	:	Shaik Meera Jani
P.W.2	:	Vallamsetty Naga Gopinath

For Respondents:-

-None-

DOCUMENTS MARKED

For Petitioner:-

Ex.P1 : Computer generated Form –GST REG-06.

For Respondents:-

Nil

Y. GOPALA KRISHNA,

I Addl. Civil Judge (Senior Division),
Guntur.

Dis No - 2339

INSOLVENCY PETITION NO.16/2017**Between;**

1. Yadlapalli Koteswara Rao, S/o.Brahmaiah, 43 yrs., R/o.Katrapadu Village, Vatticherukuru Mandal, Guntur District.
2. Guntupalli Srinivasa Rao, S/o.Appa Rao, 40 yrs., R/o.Garapadu Village, Vatticherukuru Mandal, Guntur District.

...PETITIONER.

and

1. Vemulapalli Venkata Durga Nageswara Rao, S/o.Tata Rao, 46 yrs., R/o.House No.HIG-74, Main Road, Housing Board Colony, Guntur.
2. Arumalla Hema Latha, W/o.Yesu Reddy, 41 yrs., R/o.Flat No.402, C-2, Happy Homes, 1st line, NGOs Colony, Guntur.
3. Kunam Srinivasa Reddy, S/o.Anki Reddy, 49 yrs., R/o.Door No.2-14-96/1, 3rd line, Syamal Nagar, Guntur.
4. Poluri Madhavi, W/o.Srinivasa Reddy, 42 yrs., R/o.Flat No.004, Venkata Chalapathi Residency, 1st line, Syamala Nagar, Guntur.
5. Kunchala Anuradha, W/o.Srinivasa Rao, 36 yrs., R/o.Door No.26-11-10/14A, 2nd line, Mallareddy Nagar, Guntur.
6. Official Receiver, District Court, Guntur.

...RESPONDENTS.

This petition coming on 29.4.2024 for final hearing before me in the presence of Sri C.Narendra Babu, Advocate for petitioners and of Sri A.R.Srinivasa Murthy, Advocate for 1st respondent and of Sri G.Sai Krishna, Advocate for respondents 2 to 5 and 6th respondent is represented by the Official Receiver and the matter

having stood over for consideration till this day, this Court made the following:-

:: ORDER ::

1. This insolvency petition is filed U/Secs.6 and 9 of the Provincial Insolvency Act¹ to adjudge the first respondent as insolvent and vest the property of the 1st respondent to the official receiver, Guntur and other reliefs.

2. The main case of the petitioner, in brief, is that,

i) The 1st respondent borrowed a sum of Rs. 2,00,000/- and Rs. 2,00,000/- from the 1st petitioner on 6.11.2015 and 9.11.2016, respectively, for his business purposes and executed promissory notes on the respective dates.

ii) First respondent also borrowed Rs. 3,00,000/- and Rs.4,00,000/- from 2nd petitioner on 1.11.2015 and 1.1.2016, respectively, and executed promissory notes on respective dates.

iii) Subsequently, petitioners 1 and 2 came to know that 1st respondent is indebted to several persons and alienated the schedule property to respondents 2 to 5 for meager consideration under two collusive sale deeds dt. 26.10.2016, to defeat and delay the debts of petitioners. In fact, the first

1 For brevity, 'the Act'

respondent has no other property except schedule property. Thereby, he committed an act of insolvency. Hence, they urged the Court to adjudge the 1st respondent as insolvent and vest the schedule property to the Official Receiver.

3. Respondents 1 to 5 resisted the claim of petitioners by filing counters. Respondents 1 and 5 filed counters separately. Respondents 2 to 4 jointly filed a counter. The main case of the first respondent, in brief, is that:

i) He never borrowed any amount from petitioners, and promissory notes are forged documents. There are some disputes between himself and the petitioners. In view of the disputes, they filed the present petition.

ii) He is a builder and has a good income capacity. He has no necessity to borrow amounts from the petitioners. He sold schedule property to respondents 2 to 5 for proper and valid sale consideration under registered sale deeds vide Doc. Nos. 8302/2016 and 8303/2016.

iii) Petitioners came to the Court with uncleaned hands and intended to harass the respondents. Even after selling the schedule property, he has some more properties. Therefore, he did not commit any act of insolvency by selling schedule property. Hence, he urged the Court to dismiss the petition.

4. The main case of respondents 2 to 4, in brief, is that,
- i) They do not know about the lending amount to the first respondent. They are absolutely strangers to the alleged monetary transaction, though.
 - ii) They are bonafide purchasers for valid consideration. They along with others constituted as partnership firm with an object of carrying on business in cloth under the name and style of M/s. Sai Ushodaya Sarees. They purchased item No. 1 of the petition schedule property under a registered sale deed, and since then, they have been in possession and enjoying the same as absolute owners. Similarly, the first respondent also executed a registered sale deed in favour of 5th respondent in respect of item No. 2 of petition schedule property.
 - iii) The 1st respondent also executed the registered sale deed dt.31.10.2016 in favour of Sure Ram Mohana Rao. On the same day, he again executed another sale deed in favour of Ch. Peda Abbaiah.
 - iv) They learnt that the first respondent also executed gift/sale deeds in favour of his kith and kin in the months of October or November, 2016.

v) To their knowledge, the first respondent still has some more immovable properties in and around Guntur. There is no chance for him to move away from territorial jurisdiction. As the first respondent has some more properties, his act does not come under act of insolvency. Petitioners might have colluded with the first respondent and filed the present petition to defeat their lawful rights. Hence, they urged the Court to dismiss the petition.

5. The main case of the 5th respondent, in brief, is that,

i) The first respondent is still doing business in the construction and real estate commission business. As of the date of execution of sale deed in his favour, the first respondent is not indebted to anybody. However, the 1st respondent also sold some other properties to the 3rd parties, but they were not shown in this petition. This circumstance clearly shows that this petition was filed only to harass respondents 2 to 5.

ii) To their knowledge, the first respondent has some more immovable properties in and around Guntur, and as such, there is no chance for him to move away from the territorial jurisdiction. As the first respondent has some more properties, his act does not come under act of insolvency. He purchased

schedule property for a valid consideration of Rs. 25,30,000/- under the registered sale deed dt.26.10.2016 and they are bonafide purchasers.

iii) Petitioners might have colluded with the first respondent and filed the present petition, to defeat his lawful rights. The non-joinder of necessary parties vitiates the claim made by the petitioners. Hence, they urged the Court to dismiss the petition.

6. **Now the point for determination is :-**

Whether the first respondent committed an act of insolvency; if so, is he liable to be adjudged as insolvent?

7. At the event of enquiry, the petitioners examined P.Ws.1 to 4, while relying on Exs.P1 to P12. On the other hand, respondents examined as R.Ws.1 to 3 and exhibited Exs.R1 to R7.

8. Heard arguments on both sides.

9. Perused the record.

10. Before embarking on the above point, it is apropos to mention the admitted facts observed by this court on perusal of pleadings and oral and documentary evidence of both parties are as follows:

- i) The first respondent is the owner of petition schedule property. He got constructed G+4 building on his site.

ii) He executed a sale deed dt. 26.10.2016/Ex.P5 in favour of respondents 2 to 4 regarding the ground floor of said building.

iii) He also executed another sale deed dt.26.10.2016/Ex.P6 in favour of the 5th respondent regarding the first floor of said building.

iv) Before filing this insolvency petition, petitioners got issued a legal notice dt.15.12.2016 to respondents 1 to 5.

POINT:-

Whether the first respondent committed an act of insolvency; if so, is he liable to be adjudged as insolvent?

11. It is the case of petitioners that 1st respondent borrowed Rs. 2,00,000/- and Rs. 2,00,000/- on 1.11.2015 and 9.2.2016 from the 1st petitioner for his business expenses and executed promissory notes on respective dates; and that 1st respondent also borrowed Rs. 3,00,000/- and Rs. 4,00,000/- from the 2nd petitioner on 1.11.2015 and 1.1.2016 for his business purposes and executed separate promissory notes on respective dates. Further, it is their case that the first respondent executed two sale deeds in favour of respondents 2 to 5 regarding petition schedule property with the intention of defeating and delaying his creditors, including

petitioners, and thereby committing the act of insolvency. On the other hand, respondents refuted the claim of petitioner, contending that the first respondent never borrowed any amount or executed any promissory notes. Further, they contended that their sale deed is a genuine transaction and that the first respondent discharged Sri Ram City Union Finance Ltd., debt with the sale consideration.

Whether creditor IP is maintainable without obtaining a money decree?

12. In addition to the above, learned counsel for 1st respondents questioned the maintainability of this petition by arguing that, as the debt of the petitioner is not qualified by decree, by the date of presentation of this petition or later, this IP is not maintainable under law. To buttress his contentions, he relied on the judgment of the Hon'ble High Court of Andhra Pradesh at Hyderabad in Gunapati Radha Krishan Reddy Versus Cheejmala Venkata Ramana and others reported in 2010 (3) ALD 721. As learned counsel questioned the maintainability of the case, it is apropos to discuss the same first before going into examining the above point.

13. In view of the contentions of learned counsel, Section 9 of the Act has to be examined carefully. It is discernible to reproduce Section 9 of the Act hereunder:

9. Conditions on which creditor may petition.—(1) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

(a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and

(b) the debt is a liquidated sum payable either immediately or at some certain future time, and

(c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition:

Provided that where the said period of three months referred to in clause (c) expires on a day when the Court is closed, the insolvency petition may be presented on the day on which the Court re-opens.

(2) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent, or give an estimate of the value of the security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

14. The above provision mandates compliance with three conditions: one is that a debt of Rs. 500/- or more is owed to a creditor or two or more creditors; second is that such debt is a liquidated sum payable immediately or at a certain future time; and third is that the petitioner shall file the petition before the expiration of three months from the date of the act of insolvency. Except for

these three conditions, it does not mandate the filing of a suit or the obtaining of a decree for filing an insolvency petition. In the normal sense, creditor includes decree holder, and debtor includes judgment debtor.

15. As seen from the above provision, obtaining a decree against the debtor is not a condition precedent to filing an insolvency petition. When the provision does not require a money decree for instituting a petition under Section 9 of the Act, the non-obtaining of a money decree does not prevent the petitioner from filing an insolvency petition.

16. In so far as the citation relied upon by the learned counsel is concerned, relying on Section 4 of the Act, it was held in *Gunapati Radha Krishna Reddy* that, "It is only when a suit for recovery of money, on the strength of the promissory note, is filed before a competent Court of civil jurisdiction by paying the requisite amount of Court fee, that an occasion would arise for adjudication would arise for adjudication thereof."

17. But it can be seen from Part III of the Act, Sections 45 to 50 of the Act laid down procedure for proof of debts. Following such procedures under Sections 45 to 50 of the Act would arise only after adjudging the debtor as insolvent. Section 49 of the Act specifies the procedure to be followed for proof of debt. According

to it, a debt may be proved under this Act by delivering, or sending by post in a registered letter, to the Court an affidavit verifying the debt. The affidavit shall contain or refer to a statement of account showing particulars of the debt, and shall specify the vouchers by which the same can be substantiated by the Court at any time and call for the production of vouchers. As the above provisions might not have been brought to the notice, the above finding was given.

18. In *Dara Mohan Murālidhar and Others Vs. B.Nirmala Devi and another*², the Hon'ble High Court held at para no. 22 as follows:-

[22] None of the conditions under Section 9 speaks about filing of a suit and obtaining a decree for filing an insolvency petition and at the same time, Section 2 Clause (1)(a) defines the 'creditor' as "it includes a decree-holder, 'debt' includes a judgment-debt, and 'debtor' includes a judgment-debtor". In view of the definition of the creditor, a person, who lent amount, is also a creditor as defined under Section 2(1)(a) of the Act. The word 'creditor' is much wider than a mere decree-holder and when I turn to Section 9, it is clear and it is not disputed³ that for the purposes of Section 9(a) to (h) the expression "Creditor" used in that section is used in its wider connotation and would include not only a decree-holder but also an assignee of a decree-holder.

Therefore, the person, who advanced money to the first respondent, the petitioners are entitled to initiate proceedings under Section 9 of the Act since obtaining decree against the debtor is not a precondition to adjudge the first respondent as insolvent. Therefore, dismissal of the application on the ground that the petitioners are not the judgment-debtors and failed to obtain any decree by filing a suit is not a ground to dismiss the Insolvency Petition but the first appellate Court on erroneous appreciation of law dismissed the Insolvency Petition, setting aside the order passed by the Additional Senior Civil Judge at Eluru.

(Emphasis added)

19. The above authority crystallizes that obtaining a decree is not a pre-condition to filing a creditor IP or adjudging the debtor as insolvent. The above authority is squarely applicable to the present case. In view of the above authority and Part III of the Act, the submissions of learned counsel for the 1st respondent are not sustainable.

Compliance with the first and second requirements under Section 9 of the Act:

20. **Turning to the above point,** in so far as compliance of first and second requirements under Section 9 of the Act, it is the case of petitioner that the 1st respondent borrowed Rs. 2,00,000/- and Rs. 2,00,000/- from the 1st petitioner on 1.11.2015 and

9.2.2016, respectively, and also borrowed Rs. 3,00,000/- and Rs. 4,00,000/- from the 2nd petitioner on 1.11.2015 and 1.1.2016, respectively, and executed promissory notes on respective dates. On the other hand, respondents strenuously denied the case of the petitioner, contending that the first respondent never borrowed any amount from the petitioners and the promissory notes are forged documents.

21. In view of the rival contentions of both parties and to comply with the first and second requirements under Section 9 of the Act, the burden of proof is upon the petitioners to prove that the first respondent borrowed an amount and was indebted to the petitioners. In order to prove the case, petitioners 1 and 2 examined themselves as P.Ws. 1 and 2. They reiterated the averments of the petition in their respective chief examination affidavits. Respondents cross-examined them. In the cross examination, PW1 deposed that he is an agriculturist, and he got acquainted with the 1st respondent and the 2nd petitioner; and that he and the 2nd petitioner together filed the present insolvency petition. He further deposed that he got acquainted with the first respondent through T. Koteswara Rao/PW3. Further, he deposed that the schedule property consists of four floors; Item Nos. 1 and 2

of the petition schedule property are ground and first floor of said building.

22. PW1 testified that the first respondent borrowed a total amount of Rs. 4,00,000 in two phases, i.e., Rs. 2,00,000 and Rs. 2,00,000, respectively. He further testified that he secured the amount covered under Exs. P1 and P2 by selling his agricultural land in 2009 and also received the insurance amount in 2011, but he did not file any document to show the source of securing said amount.

23. PW2 deposed in his cross-examination that he knows the first respondent through his brother-in-law/T.Koteswara Rao/PW3 since the year 2015. Further, he deposed that he is an agriculturist. Respondents further cross-examined him on the filing of cheque bounce case, his residential address at the Housing Board Colony, etc.

24. Besides the above, the petitioners examined T. Koteswara Rao and M. Veeraiah as P.Ws. 3 and 4. They claimed to be the attestor and scribe of promissory notes (Exs. P1 to P4), respectively. They supported the case of the petitioners by testifying that the 1st respondent borrowed Rs. 2,00,000/- and Rs. 2,00,000/- on 1.11.2015 and 9.2.2016 from the 1st petitioner and executed promissory notes on respective dates. Further, they

testified that the 1st respondent also borrowed Rs. 3,00,000/- and Rs. 4,00,000/- from the 2nd petitioner on 1.11.2015 and 1.12.2016 and executed promissory notes on respective dates. Respondents cross examined them.

25. In cross examination, PW3 deposed that on 1.11.2015 and 9.2.2016, 1st respondent borrowed Rs. 2,00,000/- and Rs. 2,00,000/- from the 1st petitioner, and also borrowed Rs. 3,00,000/- and Rs. 4,00,000/- from him on 1.11.2015 and 1.1.2016, respective.

26. PW4 testified that he cannot say whether promissory notes (Exs. P1 to P4) were scribed with the same pen or not.

27. Except for the above, respondents have not posed any questions regarding promissory notes/Exs.P1 to P4 transactions. Further, they put their defence by way of suggestions. Of course, P.Ws. 1 to 4 denied the same.

28. The evidence of P.Ws.1 to 4 evinces minute things under promissory notes/Exs.P1 to P4 transactions, such as the quantum of the lending amount, who borrowed the amount from whom, dates of execution of promissory notes, particulars of the attestor and scribe of promissory notes, etc. It is relevant to note that the 1st respondent admitted his acquaintance with the 1st

petitioner by making suggestions in the cross examination of PW2 as follows:

"I do not know that 1st petitioner while working under R1, asked for partnership in Bar & Restaurant business of R1, for which R1 not agreed, and that disputes arose in between them."

29. Thus, the first respondent admitted his acquaintance with the first petitioner. Even in the pleadings also, the first respondent admitted that he has acquaintances with the petitioners, but due to some disputes, they bore grudges against him and filed this petition. It is relevant to reproduce relevant portion of the pleadings of 1st respondent are as follows:

"There are some disputes in between the petitioners and this respondent and they have bore grudge against this respondent and out of such grudge this petition pressed into service."

30. Thus, the first respondent admitted acquaintance with the petitioners. Moreover, he never disputed the financial capacity of petitioners to lend amount. The evidence of P.Ws. 3 and 4 evinces the execution of promissory notes (Exs. P1 to P4) and the lending amount thereunder.

31. As seen from the cross-examination of Pws 2 and 3, the first respondent changed his version from stage to stage. In the cross-examination of PW2, he suggested that the first petitioner

committed theft of some of his blank signed cheques, and subsequently, promissory notes were created by forging his signature. It is worthwhile to reproduce the relevant suggestions put in the cross-examination of PW2 hereunder:

I do not know by keeping the same in mind, 1st petitioner committed theft of some of the blank signed cheques of R1, which he kept for business purpose.

It is not true to suggest that by seeking the signature of R1 in those blank signed cheques, Exs.P1 to P4/promissory notes created and brought into existence with the forged signatures of R1.

32. Thus, the first respondent would contend that, relying on his blank signed cheques, promissory notes were created by forging his signatures. But surprisingly, he changed his version in the cross-examination of PW3 by making the following suggestions:

It is not true to suggest that for not accepting my proposal to join me as partner in Bar and Restaurant business of R1, I committed theft of blank signed promissory notes of R1.

It is not true to suggest that I also committed theft of blank cheques of R1.

It is not true to suggest that by seeing the signatures of R1 on his blank signed promissory notes, and taking advantage of his blank cheques with me, I brought into existence cheques with forged signature of R1, and got it presented through petitioner No.2.

33. Thus, in the cross-examination of PW3, the first respondent did not dispute his signatures on promissory notes (Exs. P1 to P4). But he contends that, taking advantage of those

signatures, his signature's were forged on his blank cheques. Thus, he changed his version from the evidence of PW2 to PW3. However, the above suggestions are very close to the admission of his signatures on promissory notes.

34. Regardless of the above, respondents cross-examined P.Ws.1 to 4 at length, but nothing favourable answers were elicited from them to doubt their evidence. The evidence of P.Ws. 1 to 4 corroborated each other regarding the execution of promissory notes and the lending amount thereunder. Respondents have not attributed any animosity against P.Ws. 3 and 4 to give false evidence against the first respondent. After thorough scrutiny of the evidence of P.Ws. 1 to 4, this Court has not found a single instance to doubt their evidence regarding the execution of promissory notes (Exs. P1 to P4). The evidence of P.Ws. 1 to 4 is consistent, inspires confidence and trustworthy that 1st respondent borrowed Rs. 2,00,000/- and Rs. 2,00,000/- from the 1st petitioner and Rs. 3,00,000/- and Rs. 4,00,000/- from the 2nd petitioner and executed promissory notes in their favour.

35. It is significant to note that before filing this petition, the petitioners got issued notice to the respondents describing promissory notes transactions, and other facts. The first respondent received legal notice, but he did not issue any reply denying

promissory note transactions, though he knows the petitioners very well. In such circumstances, no prudent person would keep silent without issuing a reply notice, raising disputes before elders, etc., when he disputed the contents of a legal notice, such as the borrowed amount, the execution of promissory notes, etc. In the present case, even after receiving legal notice, the first respondent kept quiet without taking any of the above steps. This conduct of the first respondent raises adverse effects on his defence. It is one of the circumstances to doubt his defence.

36. Irrespective of the above, the petitioners established the execution of promissory notes and the lending amount thereunder through the evidence of P.Ws. 1 to 4. Thereby, they discharged their initial burden.

37. Now onus shifts to the respondents. 1st respondent strenuously denied execution of promissory notes (Exs. P1 to P4) and borrowing amounts thereunder. To substantiate his defence, he examined himself as RW1. He reiterated the averments of the counter in his chief examination affidavit. Except his self testimony, he did not examine any other witness. The respondents 3 and 5 examined themselves as R.Ws. 2 and 3. They are strangers to the promissory notes (Exs. P1 to P4) transaction. Therefore, their evidence is not appropriate at this stage.

38. Though the first respondent disputed the execution of promissory notes, contending that promissory notes are forged documents, he did not take any steps to send the promissory notes to the handwriting expert for comparison. Thus, except for the bald allegation that the promissory note is a forged document, the first respondent has not chosen to send the promissory notes with his signature to the Hand Writing Expert for comparison.

39. In *Bonala Raju and Another Vs. Sarupuru Sreenivasulu*³, wherein the Hon'ble High Court of A.P. considered Sections 72, 73 and 102 of Evidence Act and Section 118 of Negotiable Instrument Act and held that: "the burden of proof is upon the defendant when he takes the plea of forgery and the burden of proof is upon the plaintiff to establish that the defendant has executed the suit promissory note".

'In the above case, the defendant has taken a plea of forgery. However, he has not taken any steps for sending the disputed document to any hand writing expert for the purpose of comparison and opinion and has not taken any steps to file his admitted signatures for the purpose of Section 73 of Evidence Act. The Hon'ble High Court further held that the promissory note is not a compulsorily attestable document and in view of Section 118 of Negotiable Instrument Act the defendant has to establish the fact of non-passing of consideration.'

40. In the present case, the petitioners also discharged their burden by examining themselves and attestors as P.Ws: 1 to 4. Now the onus shifts to the first respondent. He has to establish that the promissory notes in question are forged documents. Whereas, he failed to take any steps to send the promissory notes to the handwriting expert. Further, he failed to file his admitted signatures before the court enable the court to compare the same⁴. In view of the circumstances, the above judgment is squarely applicable to the present facts of the case. Hence, an adverse inference is drawn against the defendant.

Affect of acquittal result in Cheque bounce case:

41. In order to make the Court doubt the promissory notes transaction, the learned counsel for 1st respondent would submit that the cheque bounce case filed by the 2nd petitioner in connection with promissory notes (Exs. P3 and P4) was ended in acquittal, and it speaks that there is no legally enforceable debt, and thereby, the 1st respondent succeeded in disproving promissory notes (Exs. P3 and P4).

42. The learned counsel rightly submitted that cheque bounce case in CC.8/2018 filed by the 2nd petitioner before II AJFCM

4 Under Section 73 of the Evidence Act.

Court, Guntur, was dismissed by acquitting the 1st respondent⁵. Except that, it is not elicited from them that the said cheque bounce case was ended in acquittal, holding that there is no legally enforceable debt. Moreover, no judgment copy of said cheque bounce case is filed. There may be a variety of reasons for dismissal of cheque bounce case, namely, defective legal notice, material alteration, discrepancy in the evidence, etc. Therefore, simply because cheque bounce case was ended in acquittal, this court cannot arrive at the conclusion that there is no legally enforceable debt. In view of the circumstances, the contentions of the learned counsel cannot be countenanced.

Non-filing of documents regarding how the first petitioner secured the lending amount:

43. Further, the learned counsel for 1st respondent invited the attention of this Court on the evidence of PW1 and submitted that he deposed that he lent amount on selling his agricultural land and securing insurance amount, but he did not file any document in that regard. Whatever that, petitioners have no financial capacity to lend such an amount, further the learned counsel.

44. In view of the arguments of learned counsel, let me examine the evidence of PW1. He testified in his cross-examination

5 It is admitted by P.Ws. 1 and 2 (petitioners) in their cross-examination.

that he secured an amount on selling agricultural land and securing an insurance amount. It is useful to reproduce relevant portion of evidence of PW1 hereunder:

The consideration amount under Exs.P1 and P2/promissory notes was secured by me by selling my agricultural field in the year 2009 and the insurance amount received in the year 2011.

45. Except for testifying about how he secured the source of the amount, PW1 did not file any document in that regard. On the other hand, the first respondent emphasized that the non-filing of documents creates doubt on the lending amount under promissory notes (Exs. P1 and 2). As seen from the pleadings, the first respondent has not denied the financial capacity of the petitioners. When the financial capacity of the petitioner is not in dispute, the non-filing of the above documents is not fatal to the petitioner. Hence, the contentions of learned counsel are not tenable.

Whether promissory notes (Exs. P1 to P4) are time-barred:

46. Eventually, the learned counsels for respondents would submit that the promissory notes in question (Exs. P1 to P4) are time barred now, and therefore, the claim of petitioners thereunder shall not be considered; consequently, this insolvency petition is liable to be dismissed.

47. As seen from the promissory notes/Exs.P1 to P4, they were executed on 1.11.2015, 9.2.2016, 1.11.2015 and 1.1.2016,

respectively. Now we are in the year 2024, and therefore, petitioners can not file a suit for recovery of money on the foot of these promissory notes (Exs. P1 to P4). But in fact, by the date of filing the present I.P., i.e., 23.9.2017, these promissory notes are in force.

48. To answer the contentions of learned counsel, it is fruitful to refer to Sec. 28(7) of the Act, which reads as follows:

Section 28: Effect of an order of adjudication:

(7) An order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made.

49. It crystallizes from the above that an order of adjudication shall relate back to, and take effect from, the date of presentation of the petition. Herein the case on hand, by the date of filing the present petition, all four promissory notes are in force. Therefore, the contention of learned counsels cannot be countenanced.

50. Thus, all the above contentions of learned counsels for respondents are not tenable.

51. It is already stated above that the first respondent failed to substantiate his defence and discharge his onus as well. On the other hand, the petitioner's established the execution of promissory notes and lending amounts thereunder through the evidence of

P.Ws. 1 to 4. Hence, it is held that the petitioner, prima facie, established the lending amount and execution of promissory notes (Exs. P1 to P4). Thereby, the petitioners complied with the first and second requirements of Sec. 9 of the Act stated above.

ACT OF INSOLVENCY:

52. As far as the third requirement is concerned, an insolvency petition shall be filed within 3 months from the date of the act of insolvency. No doubt, this petition was filed on 24.12.2016, within three months from the date of execution of sale deeds (Exs P5 and P6).

Now the question before the court is whether the execution of sale deeds amounts to an act of insolvency or not? Mere execution of sale deeds does not create any act of insolvency, unless the act of the first respondent falls under any one of the clauses under Section 6 of the Act.

Maintainability of present IP:

53. The learned counsel for 1st respondent questioned the maintainability of the present IP on the ground of a lack of plea and evidence of an act of insolvency. Since learned counsel questioned the maintainability of the present insolvency petition, it is the right time to discuss the same before examining the act of insolvency pleaded by the petitioners. Learned counsel vehemently contended

that there is no plea or evidence of the petitioners that 1st respondent departed from his dwelling house or secluded himself so as to deprive his creditors of the means of communicating with him, with the intention to defeat or delay his creditors. As a result, the petitioners have not pleaded or proved an act of insolvency for filing this petition, and therefore, this petition has to be dismissed in limin, learned counsel further contended.

No plea or evidence of petitioners that 1st petitioner departing from house or secluded himself so as to deprive his creditors of means of communication with him:

54. To answer the contentions of learned counsel, Sec. 6 of the Act is most relevant. It envisages an act of insolvency. It describes as many as eight types of acts of insolvency. Among them, Clause (1)(d) is suitable for the arguments of learned counsel. It is fruitful to reproduce Sec. 6(1)(d) of the Act hereunder:

Section 6: Acts of insolvency

(1) A debtor commits an act of insolvency in each of the following cases, namely:

- (d) if, with intent to defeat or delay his creditors,
 - (i) he departs or remains out of the territories to which this Act extends,
 - (ii) he departs from his dwelling-house or usual place of business or otherwise absents himself,
 - (iii) he secludes himself so as to deprive his creditors of the means of communicating with him;

55. Admittedly, it is not the plea and evidence of the petitioners that the first respondent departed from dwelling house and secluded himself so as to deprive his creditors. Thus, they did not claim an act of insolvency under Sec. 6(1)(d), but they claim that the first respondent sold the schedule property under sale deeds (Exs. P5 and P6) with the intention to defeat and delay the claim of his creditors, including the petitioners. Whether this contention amounts to an act of insolvency or not ? will be examined later. Simply because petitioners have not pleaded and deposed one type of act of insolvency referred to U/S. 6(1)(d), the claim of petitioners cannot be thrown away. Hence, the contentions of the learned counsel are not tenable.

56. The entire Section 6 of the Act is not relevant to the creditor insolvency petition, but Section 6(1) (a) to (e) is appropriate. As far as the present case is concerned, Section 6(1)(a) and (b) are most relevant. For a better appreciation of the case, relevant provision is re-produce hereunder:

6. Acts of insolvency.—(1) A debtor commits an act of insolvency in each of the following cases, namely:—

(a) if, in India or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally;

(b) if, in India or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;

Section 6 (1)(a):

57. As far as Section 6(1)(a) of the Act is concerned, the meaning of transfer of benefit to creditors generally is that it transfers all or substantially all of his property to a third person for the benefit of his creditors generally or to composite debtors executing for the purpose of paying creditors. This situation arises when any transfer is made to a third party for the benefit of creditors generally, as covered under (a) of the Act.

58. As seen from the sale deeds (Exs. P5 and P6), property was not transferred to creditors of the first respondent as envisaged under Section 6(1)(a) of the Act. So, Section 6(1)(a) is not applicable to the present case.

Section 6 (1)(b):-

59. As per Section 6(1)(b) of the Act, where a transfer of property or any part thereof is made with intent to defeat or delay his creditors, it amounts to an act of insolvency. In the present case, the petitioner would contend that the first respondent executed sale deeds dated dt.26.10.2016 in favour of respondents 2 to 5 with fraudulent intention to defeat their claim, and thereby, the first respondent committed an act of insolvency, and hence, the first

respondent is liable to be adjudged as insolvent. So, this provision is relevant to the present case.

Quoting wrong provision of law:

60. But the petitioners referred in the petition that the first respondent committed an act of insolvency under Section 6(e) of the Act. But the facts described in the petition attract Sec. 6(1)(b). It is a well-settled principle of law that⁶ mentioning of a wrong provision or non-mentioning of any provision of law would, by itself, be not sufficient to take away the jurisdiction of a court if it is otherwise vested in it in law. While exercising its power, the court will merely consider whether it has the source to exercise such power or not⁷. Put it in other words, by mere quoting the wrong provision of law if the Court is satisfied that the other provision may be made applicable, the relief can be granted⁸. It is evident from the pleadings of petitioners that Section 6(1)(b) of the Act applies to this case, as stated above. In view of the above-settled law, this petition cannot be disallowed on the ground of quoting the wrong provision of the law.

6 J.Kumaradasan Nair & Anr. Vs. IRIC Sohan & Ors : AIR 2009 SC 1333

7 Asfaq Qureshi vs Aysha Qureshi : 2011 (2) RCR (civil) 478

8 M. Rajagopal Reddy vs State Bank Of India, Adb, Govindaraopet : AIR 2006 AP 264,

Purpose of alienating schedule property;

61. It is the specific case of petitioners that the petition schedule property is very valuable property, but the sale deeds were executed collusively for a meager amount in favour of respondents 2 to 5 to defeat and defraud their claim. On the other hand, respondents strenuously refuted the claim of the petitioner, contending that the first respondent mere alienation of property does not constitute act of insolvency under Sec. 6(1)(b) of the Act. Further they contended that mortgage debt of Sri Ram City Union Finance Limited was discharged with the sale consideration under sale deeds/Exs.P5 and P6, and therefore, no malafides shall be attributed on their transaction. To fortify their contentions, they relied on Pydimarri Venkateswarlu vs. . Pydimarri Jalamma in AIR 1969 AP 318 and the unreported Judgment in CMSA.30/2010 on the file of the Hon'ble High Court of AP held on 4.12.2015.

62. Respondents rightly contended that mere alienation of property does not constitute act of insolvency under Sec. 6(1)(b) of the Act. Such alienation must be made with the intention of defeating and delaying the claim of the creditors. In Pydimarri Venkateswarlu's case stated supra, it was held that,

"Where a debtor therefore, transferred his property to any creditor of his and paid out of the sale proceeds, some of his creditors, a transfer not being with an intent to defeat

or delay all the creditors did not amount to an act of insolvency within the meaning of Section 6(b)."

Sale deeds executed for discharge of Sri Ram City Union Finance Ltd:

63. In order to prove that sale deeds were executed for discharge of Sri Ram City Union Finance Ltd., respondents heavily relied upon the evidence of R.Ws. 1 to 3 and Exs. R1 to R5.

64. In view of the specific contentions of respondents, sale deeds (Exs. P5 and P6) have to be examined carefully. A certified copy of the registered sale deed dt.26.10.2016(Ex.P5) discloses that the 1st respondent sold item No. 1 of the petition schedule property to respondents 2 to 4 for Rs. 17,20,000/- to discharging debt of Sri Ram City Union Finance Ltd. Similarly, a certified copy of the registered sale deed dt. 26.10.2016(Ex.P6) evinces that the 1st respondent sold item No. 2 of the petition schedule property to the 5th respondent for Rs. 25,30,000/- for the purpose of discharging Sri Ram City Union Finance Ltd.'s debt.

65. As per the above two sale deeds, by the date of the sale deeds, Sri Ram City Union Finance Ltd.'s debt is in force.

Receipts dt. 25.10.2016/Exs.R1 and R2:

66. But registered receipts dt. 25.10.2016(Exs.R1 and R2) are found to disclose that the 1st respondent discharged the debt of Sri Ram City Union Finance Ltd., by paying Rs. 25,00,000/- and Rs. 25,00,000/- thereunder. It shows that one day before the sale deed

(Exs. P5 and P6), the first respondent discharged the debt of Sri Ram City Union Finance Ltd.

67. According to respondents, with the sale consideration under Exs. P5 and P6, the first respondent discharged the debt, and therefore, they are genuine transactions. As seen from sale deeds (Exs. P5 and P6), the entire sale consideration was paid on 26.10.2016, but receipts (Exs. R1 and R2) disclose that the debt of Sri Ram City Union Finance Ltd., was discharged on 25.10.2016. Therefore, **the question of discharging the debt of Sri Ram City Union Finance Ltd., with the sale consideration under Exs. P5 and P6, does not arise.**

68. To circumvent the situation, 3rd respondent (RW2) would depose that prior to the sale transaction, 1st respondent discharged the debt of Sri Ram City Union Finance Ltd., with the amount arranged by them through their friends, and later, 1st respondent executed sale deeds in their favour, and after that, they repaid the amount which was taken from their friends. It is appropriate to reproduce a relevant portion of the evidence of RW2 (3rd respondent) hereunder:

"Prior to sale transaction, we arranged money to the first respondent through our friends and first respondent in turn discharged debt of Sri Ram City Union Finance and later he executed sale deed in our favour after receiving sale consideration from us. Thereafter, he

repaid the amount given by our friends for discharging Sri Ram City Union Finance debt."

69. In fact, there is no plea to that effect. Further, respondents have not furnished names and particulars of those friends who allegedly provided money for the first respondent and when the said amount was arranged. Further, they were not examined in this case. Furthermore, no question was posed to Pws. 1 and 2 in that regard. In view of the circumstances and absence of the above materials, the evidence of RW2 stated above cannot be believed.

70. Though it was stated in the sale deeds/Exs. P5 and P6 that they were executed to discharge the debt of Sri Ram City Union Finance, the debt of Sri Ram City Union Finance was already discharged prior to the sale deeds/Exs. P5 and P6. Therefore, the first respondent cannot escape from the above provision, relying on the purpose of executing the sale deeds referred to in Exs. P5 and P6.

71. For argument sake, if it is construed that sale deeds (Exs. P5 and P6) were executed for valid consideration, the question is: whether they are bonafide purchasers for valuable consideration, and if so, whether their transaction will be protected under Section 55 of the Act? In fact, they will be determined during enquiry

relating to the annulment of the sale transaction. So, the above questions cannot be determined at this stage.

72. In view of the above facts and circumstances, the contentions of learned counsels are not tenable.

Whether the first respondent has other substantial properties:

73. Eventually, the learned counsels for respondents would submit that the first respondent has vast properties, and some were elicited in the evidence of P.Ws.1 and 2 and R.Ws.1 to 3 and Ex.R6. As the first respondent has other substantial properties to discharge the alleged debts of petitioners, the sale of schedule property does not constitute an act of insolvency under Section 6 of the Act, learned counsels further submitted. To bolster their contentions, they relied on the judgment of the Hon'ble High Court of Madras in K.Maranaicken Vs. R.S.Saradhambal reported in AIR 1982 MAD 183 and Modugula Sreeramulu vs. Perakam Singayya, reported in 1967 (2) AWR 329.

74. On the other hand, learned counsel for petitioners would submit that the first respondent has no other property to discharge his debts, and therefore, he is liable to be adjudged as insolvent.

75. The learned counsels for respondents rightly submitted that where the debtor has substantial properties to discharge debts, alienation of some of his properties does not constitute an act of

insolvency. Sec. 25(1) of the Act mandates the Insolvency Court to dismiss the creditor petition "if it is satisfied by the debtor that he is able to pay his debts."

76. In M. Sriramulu's case stated supra, our Hon'ble High Court held that:-

When a person is having sufficient other properties, sale of one of the properties alone does not amount to act of defeating the creditors claim.

77. Similar view is also expressed by our Hon'ble High Court in Dandamudi Chakradhararao and another Vs. Pidikiti Koteswararao and another⁹. Madras High Court also expressed similar view in Maranaicken's case stated above.

78. In view of the above jurimetical jurisprudence, if the respondents establish that the 1st respondent has some other substantial properties, he cannot be adjudged as an insolvent on the ground of alienation of petition schedule property under sale deeds (Exs. P5 and P6).

79. In view of the contentions of respondents and the above authorities, let me examine whether the first respondent has other substantial properties.

G + Four Building:

80. Admittedly, the first respondent had a G+4 building and sold the ground floor to respondents 2 to 4, and the 1st floor to the 5th respondent. Respondents strenuously contended that the first respondent had the remaining three floors with him even by the date of presentation of the present insolvency petition. On the other hand, petitioners never admitted that the first respondent had the other three floors by the date of filing the petition.

81. PW1 specifically deposed that by the time of filing this petition, the first respondent had sold the remaining floors. Similarly, PW2 also deposed that he came to know that the first respondent sold all the floors in the said building. Except for that, petitioners never admitted that the first respondent had other three floors, even by the date of filing this petition.

82. Regardless of the above, the first respondent fairly admitted that it is his exclusive five floors building. Initially, he deposed that after selling the ground and first floors, the remaining floors were with him. At another time, he fairly admitted that he sold part of the property to respondents 2 to 5 and also sold the remaining property within 10 days thereafter. However, he did not file any documents, like a certified copy of those sale deeds.

83. Whatever the above admissions, if, really, the said three floors were alienated after filing the present petition, certified copies of those sale deeds would reflect the same. But he did not file them. Thus, he suppressed vital documents to prove his contentions. Therefore, adverse inferences have to be drawn against his contentions.

84. Irrespective of the non-filing sale deeds of the remaining floors, the first respondent fairly admitted that by the date of filing this IP, he had no other floors in the said building. Therefore, those three floors cannot be considered the property of the first respondent.

House in Housing Board Colony:

85. Apart from the above three floors, the learned counsel for 1st respondent would contend that the 1st respondent has a house in the Housing Board Colony, which is very valuable property and capable of discharge of the alleged debt, and the same is admitted by P.Ws. 1 and 2, and therefore, the 1st respondent shall not be adjudged as insolvent.

86. As seen from the evidence of PW1, he admitted that the first respondent owned a house in the Housing Board Colony. It is noteworthy to reproduce a relevant portion of evidence of PW1 hereunder:

“R1 is resident of HIG-74, Housing Board Colony of Guntur. It is true that the said house is own house of R1.”

“Besides the schedule property, the registered address shown for R1 in the petition also owned by R1.”

87. Certified copies of sale deeds (Exs. P5 and P6) disclose the address of the first respondent as HIG-74, APHB Colony, Nallapadu Road, Guntur. These sale deeds and evidence of PW1 support the case claim of the first respondent.

88. Similarly, PW2 also admitted that the first respondent has one house in the Housing Board Colony. It is appropriate to reproduce relevant portion of evidence of PW2 hereunder:

“R1 is having one stored house in Housing Board Colony also.”

89. Thus, the above evidence discloses that the 1st has house bearing Door No. HIG-74 of APHB Colony, Guntur.

90. But a certified copy of the registered sale deed dt. 13.12.2004/Ex.R7 discloses that Vemulapalli Naga Padmaja purchased house bearing door No. HIG-74, APHB Colony, Guntur, for Rs. 5,67,553/-. She is the wife of 1st respondent herein. This document establishes that house bearing No. HIG-74 does not belong to the first respondent; it belongs to his wife.

91. No doubt, petitioners 1 and 2 admitted that the first respondent is the owner of HIG-74, but the fact remains that his wife is the owner of the said house. Admittedly, petitioners are strangers to the sale transaction under Ex.R7, and they are not close associates of the first respondent. Therefore, simply because Pws 1 and 2 admitted ownership of the 1st respondent, the said house property cannot be treated as the property of 1st respondent. Thus, the sale deed/Ex.R7 disproves the contention of the first respondent.

Development agreement/Ex.R6:

92. Eventually, the learned counsels for respondents would submit that the 1st respondent is a partner of Sri Venkata Durga Constructions, Guntur, and entered into a development agreement-cum-GPA dt.26.5.2014 with P. Venkata Rama Rao, and as per the agreement, 7 flats were allotted to the partnership firm of the 1st respondent, which shows that the 1st respondent has substantial properties; therefore, he shall not be adjudged as insolvent. To substantiate their submissions, they strongly relied upon the evidence of RW1 and the development agreement-cum-GPA/Ex.R6.

93. In the evidence, RW1 testified that he is one of the partners of a firm by the name Sri Venkata Durga Constructions, and that firm, represented by its managing partner – Vemulapalli

Naga Padmaja, entered into a development agreement-cum-GPA/Ex.R6 with P.V. Rama Rao. Further, he testified that, as per the development agreement-cum-GPA/Ex.R6, 7 flats were allotted to the firm, and among the 7 flats, they sold 2 flats, one of which was mortgaged with the Municipal Corporation, and the remaining 4 flats are semi-finished.

Non filing of partnership deed:

94. Admittedly, the first respondent is not party to the said development agreement-cum-GPA/Ex.R6. But he contended that he was one of the partners of the said firm. Except for making the bold statement, he did not file either an original or copy, of the partnership deed of said firm to establish that he is one of the partners of said firm and that he has a share in the said 7 flats. The said partnership deed is a sheet-anchor to the contentions of the first respondent, but he did not choose to file the same.

No plea in the counters and no question posed to Pws 1 and 2 regarding Ex.R6 :

95. Apart from the above, respondents never pleaded in their respective counters about the partnership firm or development agreement-cum-GPA/Ex.R6. Even they did not pose any question regarding partnership firm or development agreement-cum-GPA/Ex.R6. Thus, the respondents have not given the petitioners the opportunity to know about the alleged development agreement

and partnership firm. However, the first respondent has not placed any material to show that he is one of the partners in the said firm and that he has a share in the said seven flats allotted to the firm.

96. For argument sake, if it is construed that the 1st respondent is one of the partners of said firm and the firm has five flats after selling two flats, the question before the Court is whether the share of the 1st respondent would be substantial property to discharge the subject matter debt?

97. The first respondent (RW1) admitted in the cross-examination that out of five flats, one is under mortgage with the Municipal Corporation and four are semi-finished, and among them, they executed sale agreements for two flats. Further, he admitted that the said project was stopped about two years ago in view of disputes between them and land owners; and that land owners filed a civil suit against him. He further admitted that they took a loan from Canara Bank, mortgaging their share, and about three years ago, it became NPA and at present, the outstanding due amount is, Rs. 80,00,000/- in the said loan account. It is desirable to reproduce relevant portion of evidence of RW1 hereunder:

"Among 7 flats, we sold 2 flats. We mortgaged one flat with Municipal Corporation. Remaining our 4 flats are semi finished. Out of said 4 flats, we executed sale agreements regarding 2 flats."

"At about two years ago, the project covered under Development Agreement-cum-GPA/Ex.P6, is stopped. In view of the disputes between ourselves and land owner regarding distribution of share in the project, the project was stopped."

"We took loan from Canara Bank, Housing Board Colony, Guntur under project loan by mortgaging our share."

"At present, there will be outstanding due of Rs.80,00,000/- in the said loan account."

98. It is manifestly clear from the above that out of five flats, two were under sale agreements, one is under mortgage with a local body, and all the four flats were under mortgage with Canara Bank, and the outstanding amount is about Rs. 80,00,000/-.

99. To ascertain whether the share of the first respondent in these flats is substantial property to discharge the subject matter debt, the first respondent has to place material regarding his share in the firm, the value of his share after deducting the loan, and the advance amount under two sale agreements. In the absence of these material, the version of respondents cannot be countenanced.

100. In view of the above facts and circumstances, it is held that respondents failed to prove that the first respondent has substantial properties to discharge the promissory note debts.

101. Reverting to an act of insolvency, it is already stated above that the first respondent is indebted to the petitioners

under promissory notes (Exs. P1 to P4). It is not in dispute that the first respondent executed sale deeds in favour of respondents 2 to 5. But the first respondent did not discharge the whole or any part of the debt, even after sale transactions. Thus, the debt of first respondent due to the petitioner remains in existence even after the sale deeds (Exs. P5 and P6). Instead of discharging the debt wholly or partly with sale consideration, the first respondent denied promissory note debt. It shows his malafide intention. As already stated above, respondents failed to prove that the first respondent has other substantial properties to discharge the debt.

102. All the above facts go to show the conduct of the first respondent, who alienated the property to defeat and defraud his creditors, including the petitioners.

Finding on the act of insolvency:

103. All the above facts and circumstances establish that the first respondent executed registered sale deeds (Exs. P5 and P6) with the intent to defeat the petitioners and as such, he denied their debts stated above. All these constitute an act of insolvency as envisaged under Section 6(1)(b) of the Act.

Finding on Point:

104. In view of the above facts and circumstances and the aforesaid discussion, it is held that the first respondent is liable to be adjudged as insolvent. Accordingly, this point is settled.

RESULT:

105. In the result, the petition is allowed by adjudging the first respondent as insolvent. The period of discharge is six months from the date of this order. The petitioner is at liberty to move an application, after compliance with Sections 45 to 50 and 54-A of the Act, to annul the transfer of immovable property under Sections 53, 54, or 4 of the Act. The petition schedule property is vested with Official Receiver. The office is directed to send a copy of this order to the District Collector, Guntur, for making Gazette notification in compliance with Section 30 of the Provincial Insolvency Act.

Typed to my Dictation, corrected and pronounced by me in the Open Court, on this the 27th day of June, 2024.

Y. GOPALA KRISHNA,
I Addl. Civil Judge (Senior Division),
Guntur.

APPENDIX OF EVIDENCE**WITNESSES EXAMINED.****For Petitioners:**

PW1 : Yadlapalli Koteswara Rao.

PW2 : Gunturpalli Srinivasa Rao.

PW3 : Thokala Koteswara Rao.

PW4 : Mannava Veeraiah.

For Respondents:

RW1 : Vemulapalli Venkata Durga Nageswara Rao.

RW2 : Kusam Srinivasa Reddy.

RW3 : Kunchala Srinivasa Rao.

DOCUMENTS MARKED

For Petitioners:

Ex.P1 : 'A' marked promissory note executed by 1st respondent in favour of 1st petitioner for Rs.2,00,000/- dt.1.11.2015.

Ex.P2 : 'B' marked promissory note executed by 1st respondent in favour of 1st petitioner for Rs.2,00,000/- dt.9.2.2016.

Ex.P3 : Certified copy of 'C' marked promissory note executed by 1st respondent in favour of 2nd petitioner for Rs.3,00,000/- dt.1.11.2015.

Ex.P4 : Certified copy of 'D' marked promissory note executed by 1st respondent in favour of 2nd petitioner for Rs.4,00,000/- dt.1.1.2016.

Ex.P5 : Certified copy of regd. sale deed bearing No.8302/16 executed by 1st respondent in favour of respondents 2 to 4 registered at SRO, Nallapadu dt.26.10.2016.

Ex.P6 : Certified copy of regd. sale deed bearing No.8302/16 executed by 1st respondent in favour of 5th respondent registered at SRO, Nallapadu dt.26.10.2016.

Ex.P7 : Regd. legal notice dt.15.12.2016.

Ex.P8 : Postal acknowledgement from 1st respondent dt.16.12.2016.

Ex.P9 : Postal acknowledgement from 2nd respondent dt.16.12.2016.

Ex.P10 : Postal acknowledgement from 3rd respondent dt.16.12.2016.

Ex.P11 : Returned legal notice from 4th respondent dt.18.12.2016.

Ex.P12 : Postal receipt of 5th respondent dt.15.12.2016.

For Respondents:

Ex.R1 : Receipt-cum-mortgage release deed on 25.10.2016 in Doc Nos.8285/2016.

Ex.R2 : Receipt-cum-mortgage release deed on 25.10.2016 in Doc Nos.8286/2016.

Ex.R3 : Three receipts issued by Sriram Finance dt.24.10.2016

Ex.R4 : CC of Sale deed vide Doc. No.8302/2016 in respect of ground floor in favour of R2 to R4.

Ex.R5 : CC of Sale deed vide Doc. No.8306/2016 in respect of 1st floor in favour of R1.

Ex.R6 : CC of Development Agreement-cum-GPA, dt.26.5.2014.

Ex.R7 : CC of registered Sale deed, dt.13.12.2004.

Ex.R8 : Account statement copy and sanctioned letter dt.7.3.2018.
(Marked subject to admissibility)

Y. GOPALA KRISHNA,
I Addl. Civil Judge (Senior Division),
Guntur.

Dis No - 2343

INSOLVENCY PETITION NO.13/2021**Between:**

Sri Govada Sambasiva Rao, S/o Masthan Rao, aged about 61 years, Hindu, Retired Employee, R/o L.R. Colony, Sangadiunta, Guntur Town, Guntur District.

... **PETITIONER.**

AND

1. Smt. Velaga Jhansi Lakshmi Bai, W/o Sambasiva Rao, aged about 52 years, Hindu, Presently R/o D.No.11-7-4, Ghantavari Street, Chenchupet, Tenali, Guntur District.
2. Devabhakthuni Ramnatha Babu, S/o Bhaskara Rao, aged about 46 years, Hindu, Business, R/o D.No.23-5-17, C/o Penneti Malleswari, Adapavari Street, Guntur, Guntur District.
3. Kammela Srinivasa Rao, S/o Suibba Rao, aged about 52 years, Hindu, Business, R/o D.No.12-13-26, Pandurangapet, Ghantavari Veedhi, Tenali Town, Guntur District.
4. Official Receiver, District Court Compound, Guntur.

... **RESPONDENTS.**

This petition coming on 24.6.2024 for final hearing before me in the presence of Sri K. Krishna Murthy, Advocate for petitioner and R1 to R3 remained, ex parte and the matter having stood over for consideration till this day, this Court made the following:-

:: ORDER ::

1. This insolvency petition is filed under Section 9 R/w Section 4 of the Provincial Insolvency Act¹ to adjudge the respondents 1 and 2 as insolvents.

1 For brevity "the Act"

2. The main case of the petitioner, in brief, is that,
- i) petitioner and Respondents 1 and 2 belong to the same locality and known to each other. The first respondent is the maternal grandmother of the second respondent. First respondent residing alternatively in Guñtur also at Tenali.
 - ii) Respondents 1 and 2 jointly borrowed an amount of Rs. 10,00,000/- from the petitioner on 21.5.2020 at his house for the purpose of family expenses and executed a promissory note, agreeing to repay the same along with interest at 24% p.a.
 - iii) Subsequently, despite the repeated demands, respondents 1 and 2 did not make any payment, postponing the same on one pretext or another. They promised that they would sell the property and repay the debt with sale proceeds. While so, he came to know that respondents 1 and 2 are making attempts to alienate the petition schedule property to their kith and kin without valid consideration to avoid the lawful debt of petitioner. Knowing the same, the petitioner approached the respondents 1 and 2 to ascertain the fact, but they believably informed that they would intimate for clearance of debt after settling the same.

iv) While so, the petitioner had a doubt about the activities of respondents 1 and 2 and made an inquiry about the same and came to know that respondents 1 and 2 maliciously and clandestinely executed registered sale deed in the name of the third respondent with a view to defrauding the creditors, including the petitioner.

v) In fact, a registered sale deed is sham, nominal and devoid of consideration. It was brought into existence only with a malafide intention to defraud and to cheat their creditors. The value of property is more than Rs. 80,00,000/- to one crore rupee, even now it is offered to sell the same. Thereby respondents 1 and 2 committed act of insolvency. Thereafter, petitioner got issued legal notice on 21.5.2020 to all the respondents with a demand to repay the debt. But they did not respond to his notice. Hence, the present insolvency petition is filed to adjudge the respondents 1 and 2 as insolvents.

3. Despite service of notices, respondents 1 to 3 did not appear before the court. Hence, they were set exparte.

4. **Now the point for determination is :-**

Whether the respondents 1 and 2 committed an act of insolvency; if so, are they liable to be adjudged as insolvents ?

5. At the event of enquiry, the petitioner examined P.W. 1, while relying on Exs.P1 to P8.
6. Heard arguments on both sides.
7. Perused the record.

POINT :-

Whether the respondents 1 and 2 committed an act of insolvency, if so, are they liable to be adjudged as insolvents ?

8. This petition is filed by the creditor under Section 9 of the Act to adjudge the respondents, 1 and 2 as insolvents. In view of the claim of the petitioner, it is appropriate to examine Section 9 of the Act, which deals with creditor insolvency petition. The said provision reads as follows:

9. Conditions on which creditor may petition.—(1) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

(a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and

(b) the debt is a liquidated sum payable either immediately or at some certain future time, and

(c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition:

Provided that where the said period of three months referred to in clause (c) expires on a day when the Court is closed, the insolvency petition may be presented on the day on which the Court re-opens.

(2) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent, or give an estimate of the value of the security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

9. The above provision mandates compliance with three conditions: one is that a debt of Rs. 500/- or more is owed to a creditor or two or more creditors; second is that such debt is a liquidated sum payable immediately or at a certain future time; and third is that the petitioner shall file the petition before the expiration of three months from the date of the act of insolvency.

10. In so far as compliance of first and second requirements under Section 9 of the Act, it is the case of the petitioner that the respondents 1 and 2 borrowed Rs. 10,00,000/- on 21.5.2020 for their family expenses and executed a promissory note, agreeing to repay the same along with interest at 24% p.a.

11. In order to comply with the first and second requirements under Section 9 of the Act, the burden of proof is upon the petitioner to prove that the respondents 1 and 2 borrowed an amount and were indebted to the petitioner. In order to prove the case, the petitioner examined himself as PW1. He reiterated the averments of petition in his chief examination affidavit.

Respondents failed to cross-examine Pw. 1. Thereby, his evidence is unchallenged.

12. The unchallenged evidence of Pw.1 establishes the lending amount and execution of the promissory note. After thorough scrutiny of the evidence of Pw1, this court has not found any circumstances to doubt the case of petitioner. Thus, the petitioner established the lending amount and execution of promissory note through his evidence. Hence, it is held that the petitioner, prima facie, established the lending amount and execution of promissory note/Ex.P8. Thereby, the petitioner complied with the first and second requirements of Sec. 9 of the Act stated above.

ACT OF INSOLVENCY:

13. As far as the third requirement is concerned, an insolvency petition shall be filed within 3 months from the date of act of insolvency. According to the petitioner, respondents 1 and 2 committed an act of insolvency by executing a sale deed of schedule in favour of the third respondent without passing any consideration thereunder, intending to defeat and defraud his claim. In view of the contentions of petitioner, the question before the court is whether the execution of the sale deed amounts to an act of insolvency or not?

14. Section 6 of the Act envisages an act of insolvency. The entire Section 6 is not relevant to the creditor insolvency petition. But Section 6(1) (a) to (e) is relevant. As far as the present case is concerned, Section 6(1)(a) and (b) are most relevant.

15. To adjudge the debtor as insolvent, the petitioner (creditor) shall establish the act of insolvency laid down under Section 6(1)(a) and (b) of the Act. For a better appreciation of the case, relevant provision is reproduced hereunder:

6. Acts of insolvency.—(1) A debtor commits an act of insolvency in each of the following cases, namely:—

(a) if, in India or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally;

(b) if, in India or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;

16. As far as Section 6(1)(a) of the Act is concerned, the meaning of transfer of benefit to creditors generally is that it transfers all or substantially all of his property to a third person for the benefit of his creditors generally or to composite debtors executing for the purpose of paying creditors. This situation arises when any transfer is made to a third party for the benefit of creditors generally, as covered under (a) of the Act.

17. As seen from the sale deed/Ex.P1, property was not transferred to creditors of respondents 1 and 2 as envisaged under

Section 6(1)(a) of the Act. So, Section 6(1)(a) is not applicable to the present case.

18. As per Section 6(1)(b) of the Act, where a transfer of property or any part thereof is made with intent to defeat or delay his creditors, it amounts to an act of insolvency. In the present case, the petitioner would contend that the respondents 1 and 2 executed a sale deed dt.18.11.2020 in favour of the third respondent with fraudulent intention to defeat her claim, and thereby, the respondents 1 and 2 committed an act of insolvency, and hence, the first respondent is liable to be adjudged as insolvent. So, this provision is relevant to the present case.

19. The sale deed/Ex.P1 reveals that the second respondent, being the general power of attorney of the first respondent, executed the sale deed in favour of the third respondent for Rs. 50,00,000/-, but stamp duty was paid on Rs. 87,12,000/-. Further, it reveals the first respondent authorized the second respondent to sell the schedule property on her behalf by appointing him as GPA. It shows that the first respondent is the owner of the property, and she sold the same to third respondent. Further, it reveals the second respondent acted as an agent of the first respondent, and he has nothing to do with schedule property. Therefore, simply by executing the sale deed/Ex.P1 as GPA of the

first respondent, act of second respondent does not attract act of insolvency under Sec. 6 of the Act. Hence, the second respondent cannot be adjudged as insolvent.

20. It is already stated above that the petitioner established the debt of the first respondent. It is not in dispute that the first respondent executed a sale deed in favour of the third respondent and received Rs. 50,00,000/-. But she did not discharge the whole or any part of the debt, even after the sale transaction. Thus, the debt of the first respondent due to the petitioner remains in existence even after the sale deed/original of Ex.P1. Instead of repaying the debt, the first respondent alienated his property under a registered sale deed.

21. All the above facts go to show the conduct of the first respondent that she alienated the property to defeat and defraud the petitioner.

Finding on the act of insolvency:

22. All the above facts and circumstances establish that the act of first respondent in executing the register registered sale deed/Ex.P1 without discharging the promissory note debt stated above constitutes an act of insolvency as envisaged under Section 6(1)(b) of the Act.

23. In view of the above facts and circumstances, it is held that the first respondent is liable to be adjudged as insolvent.

Accordingly, this point is settled.

24. It is not out of place to mention here that the petitioner is at liberty to move an application, after compliance with Sections 45 to 50 and 54-A of the Act, to annul the transfer of immovable property under Sections 53, 54, or 4 of the Act.

RESULT:

25. In the result, the petition is partly allowed by adjudging the first respondent as insolvent. The period of discharge is six months from the date of this order. The petition schedule property is vested with Official Receiver. The office is directed to send a copy of this order to the District Collector, Guntur, for making a Gazette notification in compliance with Section 30 of the Provincial Insolvency Act.

Typed to my Dictation, corrected and pronounced by me in the Open Court, on this the 9th day of July, 2024.

Y. GOPALA KRISHNA,
I Addl. Civil Judge (Senior Division),
Guntur.

APPENDIX OF EVIDENCE**WITNESSES EXAMINED****For Petitioner:**

P.W.1 : Govada Sambasiva Rao

For Respondents:

-None-

DOCUMENTS MARKED**For Petitioner:**

Ex.P1: Certified copy of registered sale deed dated 18.11.2020.

Ex.P2: Office copy of legal notice dated 22.1.2021.

Ex.P3: Postal acknowledgment of R1.

Ex.P4: Returned RP cover of R2.

Ex.P5: Returned RP cover of R3.

Ex.P6: Computer generated copy of postal track consignment.

Ex.P7: Reply notice dated 1.2.2021.

Ex.P8: Promissory note dated 21.5.2020.

For Respondents:

-Nil-

Y. GOPALA KRISHNA,
I Addl. Civil Judge (Senior Division),
Guntur.

Dis No - 2338

INSOLVENCY PETITION NO.32/2023**Between:**

Pagadala Gopi, S/o Atchaiah, Hindu, aged 36 years, Taxi driver,
R/o 4th lane, Nethaji Nagar, Guntur.

...PETITIONER.

AND

1. Nandyala Sitha, W/o Venkat Reddy, Hindu, 45 years, House wife, R/o Miriyala Village, Karampudi Mandal, Guntur District.
2. Boddapati Srilakshmi, W/o Chandra Reddy (late) House wife, 28 years, Garlapadu village, Vatticherukuru Mandal, Guntur District.
3. Devathoti Rajesh Kumar, S/o Anthony, Christian, aged 34 years, Photographer, R/o Ambedkar Nagar, Dokiparthi Village, Medakonduru Mandal, Guntur District.
4. The Official Receiver, District Court complex, Guntur.

...RESPONDENTS.

This petition coming on 4.7.2024 for final hearing before me in the presence of Sri Ankalu Vadala, Advocate for petitioner and Respondents having remained *exparte*; and the matter having stood over for consideration till this day, this Court made the following:-

:: ORDER ::

1. This insolvency petition is filed under Section 10 of the Provincial Insolvency Act¹ to adjudge the petitioner as insolvent.
2. The main case of the petitioner, in brief, is that,

¹ For brevity, "the Act"

i) He borrowed amounts from the respondents 1 to 3 for his family necessities. Later, he paid several amounts towards interest, but he is unable to clear off his debts due to a lack of engaging taxi by his customers. In view of the circumstances, he sustained a loss and was indebted to respondents 1 to 3.

ii) The petitioner plied his taxi successfully for some period. Later, due to non-engaging his taxi by the customers, he sustained huge losses in the business. He borrowed amounts from the respondents and executed promissory notes and also a hand loan. As he failed to repay the debts, respondents threatened him with dire consequences. Further, they are threatening and pressurizing him to repay the debts with interest. In fact, his liabilities exceed his assets. Hence, he urged the court to adjudge him as insolvent.

3. Though ample time was given, no counter is filed by respondents. As such, they were set exparte.

4. Now the point for determination is:

Whether the petitioner is entitled to be adjudged as an insolvent as prayed for?"

5. During the course of enquiry, the petitioner examined himself as P.W.1. and no document is marked. On the other hand, respondents did not adduce either oral or documentary evidence.

6. Heard arguments.
7. Perused the record.

POINT:-

8. This petition was filed under Section 10 of the Act. So, it is apropos to go through the prerequisites laid down under Section 10 of the Act to enable the debtor to file the petition. The relevant portion of Section 10(1) reads as follows:

Sec.10 (1): "A debtor shall not be entitled to present an insolvency petition, unless he is unable to pay his debts."

9. The very beginning words of section 10(1) enunciates that, inability to pay the debts is SINE QUA NON for filing insolvency petition by the debtor.

10. Section 24 deals with 'procedure at hearing'. The relevant portion of section 24 reads as follows :

Sec.24 (1): "On the date fixed for hearing of the petition, the court shall require proof of the following matters:

(a) The creditor or debtor, as the case may be, is entitled to present the petition.

Provided that, where the debtor is the petitioner, he shall, for the purpose of proving his inability to pay his debts, be

required to furnish only such proof as to satisfy the Court that there are prima facie grounds for believing the same.

Sec.24 (2): The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon."

11. When I.P. filed by the debtor shall be dismissed as laid down under section 25(2) of Provincial Insolvency Act, reads as follows:

"The Court shall dismiss the petition if it is not satisfied of his right to present the petition."

12. On a combined reading of Sections 10, 24 and 25(2), it is abundantly clear that the petitioner/debtor is not entitled to be declared as insolvent merely for asking it, and the Court has to verify the existence of prima facie grounds for considering the plea of the debtor to declare him as an insolvent.

13. At this juncture, it is relevant to go through Judgments of our own High Court. In Dasari Srihari Rao Vs Talluri Harinadha Babu². Wherein the Hon'ble Division bench of our High Court succinctly held as follows:

"The debtor, who files an application to adjudge him as insolvent is under an obligation to satisfy the Court, by furnishing

necessary information and any failure in that regard would entail in rejection of the application under Section 25 (2) of the Act."

14. In Kota Sivarama Prasad Vs. Shaik Mastan Vali and another³, the Hon'ble High Court held that,

A debtor cannot be declared as insolvent, unless he establishes satisfactorily by conclusive prove that he is unable to pay debt.

15. In Chittineni Mobana Rao Vs Jagarlmudi Subbarao⁴, the Hon'ble High Court held that,

the proposed insolvent has only to satisfy the court as to existence of prima facie grounds which in turn must disclose that the assets held by him are not adequate to meet the liabilities.

16. In T.Chandraskharaiah Vs. D.Sreramulu Chetty and others⁵, the High Court was pleased to examine the provisions of Insolvency Act extensively with emphasizing on Sec.10 and Sec.24 of the Provincial Insolvency Act. Ultimately, it was held that,

even though the petitioner, who seeks himself to be declared as an Insolvent need not prove his case beyond reasonable doubt, but he should lead evidence and or place prima facie material before the Court, so as facilitate the Court to reach to conclusion that he is an Insolvent. He should place all such material before this court which would prima facie show

3 2014 (3) ALT 602

4 2010 (6) ALD 514

5 2005 (1) ALT 407

that there exists grounds to believe that he is unable to discharge the debts of the respondents, and he became insolvent.

17. On the touchstone of the above legal principles, this Court now proceeds to test the case of the petitioner/debtor. It is the case of petitioner that he sustained losses in the travel business due to a lack of engaging taxi by his customers; consequentially, he borrowed amounts and failed to discharge the same, as his liabilities exceed his assets.

18. To comply with mandatory requirements under Section 10(1) of the Act, the petitioner shall establish that his debts and liabilities exceed his property and, thereby, he is unable to pay debts. In order to comply with requirements, the petitioner examined himself as PW1. He reiterated the averments of the petition in his chief examination affidavit. Respondents failed to cross-examine PW1. Thereby, his evidence became unchallenged.

19. In order to prove debts, except for the self-testimony of the petitioner (P.W.1), the petitioner did not produce any document like a counterfoil, etc. But he furnished particulars of debts, i.e., quantum of debt, nature and date of debt, details of the creditors, etc., in petition 'A' schedule property. On the other hand, respondents failed to cross-examine P.W.1. In view of the circumstances, the schedule debt cannot

be doubted. It is relevant to reproduce the particulars of debts shown in petition 'A' schedule property hereunder:

'A' schedule

Sl.No.	Name of the Creditor	Amount due	Nature of debt
1.	Nandyala Sutha	Promissory note dt.8.6.2021	Rs.6,00,000/-
2.	Boddapati Sri LakshmiTotal	Hand Loan dt,15.11.2021	Rs.25,000/-
3.	Devathoti Rajesh Kumar	Hand Loan in the year2022 in the year 2022	Rs.7,25,000/-
		TOTAL	Rs.7,25,000/-

20. The above 'A' schedule property demonstrates that the petitioner is indebted to Rs. 7,25,000/-. Now the question is: whether 'A' schedule debt exceeds his property?

21. The petitioner showed his properties in the petition 'B' schedule property. As seen from the petition B schedule, immovable property, securities, debts payable to petitioner, and cash on hand (B1 to B4) are shown as nil. However, he showed wearing apparel in the B-5 Schedule worth Rs. 8000/- (shirts-2, pants-2, 2 chairs, table, household utensils, Fridge and iron safe). As seen from the record, there is no contra material to consider that the petitioner has some other properties or means to discharge 'A' schedule debt. Thus, it is clear from petition 'A' and 'B' schedules that the debts and liabilities of the petitioner are greater

than the property shown in the petition 'B' schedule. Thereby, the petitioner complied with mandatory requirements under Section 10(1) of the Act to adjudge him as insolvent.

22. In view of the above facts and circumstances, this Court is of the opinion that the petitioner is entitled to be adjudged insolvent. Accordingly, this point is answered.

23. In the result, the petition is allowed by adjudging the petitioner as insolvent by giving him six months to discharge. All his properties are vested with the Official Receiver to deal with them according to the provisions of the Provincial Insolvency Act, 1920. The office is directed to send a copy of this order to the District Collector, Guntur, for Gazette publication in compliance with Sec. 30 of the Provincial Insolvency Act.

Typed to my Dictation, corrected and pronounced by me in the Open Court, on this the 12th day of July, 2024.

Y. GOPALA KRISHNA,
I Addl. Civil Judge (Senior Division),
Guntur.

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

For Petitioners:

P.W.1 : Pagadala Gopi

For Respondents: None.

DOCUMENTS MARKED**For Petitioner:****-Nil-****For Respondents:****-Nil-**

Y. GOPALA KRISHNA,
I Addl. Civil Judge (Senior Division),
Guntur.

Dis No - 2342

INSOLVENCY PETITION NO.50/2020**Between:**

1. Manasa Sri Enterprizers, rep. by its Proprietors Annem Lakshmi W/o Nagi Reddy, aged about 62 years, Hindu, Manasa Sri Enterprizers proprietor.
2. Manasa Sri Enterprizers, rep. by its Authorized Signature Annem Maladri Reddy, aged about 42 years, Hindu.

Both are residing at Door No.26-38-37, 17th Line, A.T. Agraharam, Guntur.

...PETITIONERS.**AND**

1. CPR Chillies, rep. by its Proprietor Chinnapu Reddy, having its resident at Door No.23-4-46, Mahatma Gandhi Road, Eluru Bazar, Guntur.
2. Lakshmi Traders, rep. by its Proprietor Srinivas Reddy, having its resident at Door No.6-3-14, 3rd line, Sambasivapet, Guntur.
3. Nandipati Seetaiah & Son Co. General Merchants and commission agents rep. by its Proprietor Chinka Krishna, having its resident at Door No.24-3-82, Patnam Bazar, Guntur.
4. Narendra Traders, rep. by its Proprietor Siva Reddy, having its resident at FF-3, Sri Sai Geeta Complex, Patnam Bazar, Guntur.
5. Sai Baba Trading Company, Chillies Merchants and commission agents, rep. by its Proprietor Sambhi Reddy, having its resident at D.No.22-6-161, Medara Bazar, Lalapet, Guntur.
6. Sri Kanaka Durga Trading Company, General Merchants and commission agents, rep. by its Proprietor Shekar, having its resident at Hazaruvari Street, Guntur.
7. Sinivasa Trades, rep. by its Proprietor Sri Hari, having its resident at D.No.12-28-22, Opp. Liberty theatre line, Bestapet, Guntur.
8. Sri Radha Krishna Traders Company, General Merchants and commission agents, rep. by its Proprietor Manava Radha

- Krishna, having its resident at Door No.74-1-39, Etukur Road, Guntur.
9. Sri Surya Sai Trading Company, General Merchants and commission agents, rep. by its Proprietor Sinivas, having its resident at Door No.24-3-120, Patnam Bazar, Guntur.
 10. Vijaya Sankar Traders, General Merchants and commission agents, rep. by its Proprietor G. Veera Reddy, having its resident at Door No.24-2-78C, 1st Floor, Chaparalavari Street, Patnam Bazar, Guntur.
 11. Lakshmi Gayatri Traders, General Merchants and commission agents rep. by its Proprietor Hanimi Reddy, having its resident at Door No.26-39-129/258, Bhavanipuram, 3rd line East side, Reddy College, Guntur.
 12. Sri Uma Maheswara & Company, General Merchants and Commission agents, rep. by its Proprietor Tirumala Reddy, having its resident at 3rd floor, 7th lines street, Patnam Bazar, Guntur.
 13. Somisetty satyanarayana & Sons, commission agents, rep. by its proprietor Rajashekar Reddy, having its resident at Door No.11-4-121, Rajagari Thota, rd Line, Guntur.
 14. Sri Sri Sai Srinivasa Chillies Traders, General Merchants and commission agent, rep. by its Proprietor Karnati Srinivasa Rao, having its resident at Door No.24-3-14, Beside Navatha Road Transport, R. Agraharam, Guntur.
 15. Andhra Trading Company, rep. by its Proprietor Gopala Krishna, having its resident at Dor No.24-11-186/A, 1st Floor, Main Road, Patnam Bazar, Guntur.
 16. Sri Kalyani Trade;rs, rep. by its Proprietor Venu Gopal Rao, having its resident at Door No.24-11-15, Patnam Bazar, Guntur.
 17. Sri Venkateswara General Trading Company, rep. by its Proprietor Bala Swamy, having its resident at near TMB Bank, Chaparalavari Street, Guntur.
 18. Devisetty Mallaiah Son's, commission agents rep. by its Proprietor Devisetty Bujji, having its resident at Sri Kanyakaparameswari Temple Street, Guntur.
 19. Vuduta Subba Rao Son, General Merchants and commission agents rep. by its Proprietor Naga Malleswara Rao, having its resident at Yamarthivari Street, Near TMB Bank, Patnam Bazar, Guntur.
 20. Gowri Sankar Trading Company Trading Company, General Merchants and commission agents, rep. by its Proprietor Krishna, having its resident at Door No.11-1-100/A, Raja's Garden, Guntur.

21. Kandimalla Seshajah Sons, rep. by its Proprietor Ravi, having its resident at Chalamayya Satram, Sangadigunta, Guntur.
22. Vijaya Sai General Trading Company, rep. by its Proprietor G. Venkateswara Reddy, having its resident at Door No.24-3-87M, Opp. SRMT, Patnam Bazar, Guntur.
23. Bhagya Lakshmi Chillies Commission Agencies, rep. by its Proprietor Koteswara Rao, having its resident at SR complex, Bandla Bazar, Guntur.
24. Matha Traders, General Merchants and Commission agents rep. by its Proprietor Srinivasa Rao, having its resident at lalapet, Guntur.
25. New Sri Vijayadurga Traders, General Merchants and commission agents repl. By its Proprietor, Mannava Govindha Rao, having its resident at Door No.20-10-9/A, Etukur Road, Guntur.
26. Kondepu China Venkateswarlu son, rep. by its Proprietor A. Srinivasa Rao, having its resident at Door No.23-11-98, 1st Floor, Eluru Bazar, Guntur.
27. M/s. M.N. Exporters, rep. by its Proprietor Dhalapathi, having its resident at M.N. Export House, 2nd floor, Arundelpet, Guntur.
28. Sri Keerthi Enterprises, rep. by its Proprietor Siva Reddy, having its resident at Beside TMB Bank, Patnam Bazar, Guntur.
29. Universal Trades Company, General Merchants and Commission agents rep. by its Proprietor Purushotam, having its resident at Door No.3-29-104/1, Krishna Nagar, Ramanujakutam, Guntur.
30. Pamidi Enterprises commission agents rep. by its Proprietor Krishna Rao, having its resident at Door No.23-4-32/2, Fish Market Bazar, Guntur.
31. Sri Vijayamaruthi Taders Chillies Merchants, rep. by its Proprietor Chilaka Srinivasa Reddy, having its resident at 3rd line, Raja's Garden, Guntur.
32. Sivanaga Suresh Traders, General Merchants and commission agents, rep. by its Proprietor Pidaparthi Srinivasa Reddy, having its resident at Door No.24-11-165/B, Seven Lines Street, Patnam Bazar, Guntur.
33. Vijaya Vardhani Traders, Chillies Merchants, rep. by its Proprietor, Chilaka Srinivasa Reddy, having its resident at 3rd line, Raja's Garden, Guntur.
34. Bramaramba Traders, General Merchants and commission agents, rep. by its Proprietor Lakkireddy Mohan Reddy, having

its resident at Door No.1-62, Near Sivalayam, Nallapadu, Guntur.

35. Sri Durga Bhavani Chillies Traders, rep. by its Proprietor Koteswara Rao, having its resident at Door No.24-2-19, Opp. Amma Complex, Chaparalavari Street, Patnam Bazar, Guntur.
36. Kumara Swamy Gunnies, Old & New Gunnies Merchants, rep. by its Proprietor Teja S/o Kumara Swamy, having its resident at Door No.23-11-100, Eluru Bazar, Guntur.
37. Rajan Traders, General Merchants and commission agents, rep. by its Proprietor S. Kishor babu, having its resident at Door No.23-12-70/1, Hazaruvari Street, Guntur.
38. Brahma Reddy, S/o not known, R/o D.No.25-16-304/14, Near Mirchi Yard, Guntur.
39. Mule Krishna Reddy, S/o not known, R/o Plot No.38, Telecom Colony, Near Raja Rajeswari temple, Siva Nagar, Alwal – Hyderabad – Telangana.
40. Visamsetty Srinivasakumar, R/o Srinilayam Apartments, flat No.403, 2/18 Brodipet, Guntur.
41. Bajaj Finserv, rep. by its branch manager, 2nd floor, D.No.5-25-92, Prasad Nilayam, 3/7th line, Brodipet, Guntur.
42. IIFL Finance Ltd., rep. by its branch manager, address at 5-9-22/B/501, 5th floor, My home Sarovar Plaza, Secretariat Road, Hyderabad, Telangana.
43. ICICI Bank Ltd., rep. by its branch Manager, Murali Chamders, 40-1-127, 128, 129, MG Road, Vijayawada, A.P.
44. MAGMA Finance Corporation, rep. by its branch manager, Teacher's colony, Benz Circle, Vijayawada, A.P.
45. DCB Bank, Nallapadu Branch, Guntur, rep. by its Branch, Manager.
46. Official Receiver, District Court Complex, Guntur,

...RESPONDENTS:

This petition coming on 8.5.2024 for final hearing before me in the presence of Sri R. Sivaji, Advocate for petitioner and Sri G. Kamalakar Rao, Advocate for R13; and R1 to R12, R14 and R45 having remained exparte; and the matter having stood over for consideration till this day, this Court made the following:-

:: O R D E R ::

1. This insolvency petition is filed under Section 10 of the Provincial Insolvency Act¹ to adjudge the petitioners as insolvents.
2. The main case of the petitioners, in brief, is that,
 - i). The first petitioner conducted business in chillies and its byproducts in the name and style of Manasa Sri Enterprises, represented by its proprietor, Anhnem Lakshmi. The second petitioner is authorized signatory of the first petitioner through Regd. GPA No. 19 of BK IV of 2017. Since 2019, the petitioners have been doing business and have borrowed material, spices, from the concerned agents for manufacturing byproducts. In that course, petitioner issued receipts, blank cheques and letterheads of second petitioner as demanded by their agents.
 - ii) Further, the petitioners availed loans from various financial institutions, like IIFL, Bajaj Finserv, Magma Fincorp, ICICI Bank, and the other chillie agents, private persons shown as respondents. Petitioners are sincerely paying amounts for the material purchased by them up to the Corona pandemic period. The Corona pandemic condition affected the entire business of the petitioners. Upto March 2020, petitioners used to pay the dues regularly and in time, but due to lockdown, the entire

1 For brevity, "the Act"

business was put in very bad condition. Their entire stock was damaged due to long-term storage. Taking advantage of business and financial needs, petitioners issued blank receipts, blank cheques, and letterheads containing their signatures as demanded by their creditors. Ultimately, it resulted in driving the business of the petitioners into doll-drums. They sustained huge losses in the business. On that, respondents started hunting and harassing them, taking advantage of blank-signed receipts, blank signed cheques, and letterheads in their custody. Further, they threatened the petitioners with legal consequences, including a threat of physical violence against the petitioners and their family members. As their business went into doldrums, they wound up their business due to an unexpected pandemic situation, lockdown and lack of funds.

iii) The petitioners shown their creditors in petition A-schedule and their properties in petition B-schedule. Now the petitioners are not able to discharge their debts. Their liabilities exceed their properties. Hence, they urged the court to adjudge them as insolvents.

3. On the other hand, respondent No. 13 resisted the claim of petitioner by filing counter. He admitted the business of first

petitioner, its location and its products, while denying other allegations in the petition. The main case of the 13th respondent, in brief, is that:

i) Schedules appended to the petition disclose the names of creditors of petitioners and amounts due to them. Further, 'B' and 'B1' schedules reveal the movable and immovable properties owned by the petitioners. Petitioner fabricated some of the creditors and due amounts in petition A-schedule property with the active support of their kith and kin so as to evade amounts to the 13th respondent. In fact, petitioners owned valuable movable and immovable properties, but they suppressed the same, deliberately. Hence, he urged the court to dismiss the petition.

4. **Now the point for determination is:-**

"Whether the petitioners are entitled to be declared as insolvents as prayed for?"

5. During course of enquiry, the petitioners examined Pws 1 and 2, while relying on Exs.P1 and P2. On the other hand, 13th respondent examined RW1, but no documents are marked on his behalf..

6. Heard arguments. Written arguments are filed by the petitioner.

7. Perused the record.

POINT:-

8. As seen from the petition, respondents 41 to 45 are companies. Their nature and status are not disputed by either of the parties. Now the question before the court is, whether an insolvency petition is maintainable against companies or corporations, like respondents 41 to 45.

9. Sec. 8 of the Act would answer the above question. It enumerates the "*exemption of corporation etc., from insolvency proceedings.*" It is worthwhile to reproduce the provision hereunder:

"8. Exemption of corporation, etc. from insolvency proceedings:- No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force."

10. A plain reading of the above provision makes it manifest that an insolvency petition filed against the company is not maintainable in view of the exemption of companies/corporate from insolvency proceedings. Thus, the provision declares the exemption of corporations, etc., from insolvency proceedings². In *Indian Overseas Bank Vs. Popuri Veeraiah and another*³, the Hon'ble Composite High Court held³ at Para No.11 as follows:

² S. Prabhakar Reddy vs Busi Reddy Gari Nageswar Reddy and Others in C.M.A.No.840 OF 2005 on 31 December, 2020.

³ 2009(4) ALT 365

11. On a bare reading of the above Section, it is quite apparent that the corporation or the associations or companies registered under any enactment in force are exempted from being proceeded against. Therefore, it is not explained as to how and why the respondent No. 1 has included the petitioner as one of the creditors in the insolvency petition under Section 10 of the Provincial Insolvency Act, 1920. Therefore, under the scheme of the Provincial Insolvency Act, 1920, having regard to such a specific exemption given under the aforesaid provision, it cannot be said that a bank, which is a registered company can fall well within the mischief of the creditor for the purpose of the said Act. Therefore, the question of invoking the provisions of the Insolvency Act against petitioner bank does not arise nor is valid. Therefore, the very application as has been framed and filed purportedly under Section 10 of the Provincial Insolvency Act, 1920, against the petitioner is not maintainable.

11. In view of the above jurimetrical jurisprudence, the question of initiating any insolvency proceedings against companies or corporations is neither sustainable nor valid, having regard to the exemption provided under the Act. In the present case, respondents 41 to 45 are companies. In view of the above provision and authorities, the present insolvency petition is not maintainable against respondents 41 to 45.

12. Coming to other respondents, this petition is filed under Section 10 of the Act. So, it is apropos to go through the prerequisites laid down under Section 10 of the Act to enable the debtor to file the petition. The relevant portion of Section 10(1) reads as follows:

Sec.10 (1): "A debtor shall not be entitled to present an insolvency petition, unless he is unable to pay his debts."

13. The very beginning words of Section 10(1) enunciate that, inability to pay the debts is SINE QUA NON for filing an insolvency petition by the debtor.

14. Section 24 deals with 'procedure at hearing'. The relevant portion of Section 24 reads as follows:

Sec.24 (1): "On the date fixed for hearing of the petition, the court shall require proof of the following matters:

(a) The creditor or debtor, as the case may be, is entitled to present the petition.

Provided that, where the debtor is the petitioner, he shall, for the purpose of proving his inability to pay his debts, be required to furnish only such proof as to satisfy the Court that there are prima facie grounds for believing the same.

Sec.24 (2): The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon."

15. When I.P. filed by the debtor shall be dismissed as laid down under section 25(2) of Provincial Insolvency Act, reads as follows:

"The Court shall dismiss the petition if it is not satisfied of his right to present the petition."

16. On a combined reading of Sections 10, 24 and 25(2), it is abundantly clear that the petitioner/debtor is not entitled to be declared as insolvent merely for asking it, and the Court has to verify the existence of prima facie grounds for considering the plea of the debtor to declare him as an insolvent.

17. At this juncture, it is relevant to go through Judgments of our own High Court. In Dasari Srihari Rao Vs Talluri Harinadha Babu⁴. Wherein the Hon'ble Division bench of our High Court succinctly held as follows:

"The debtor, who files an application to adjudge him as insolvent is under an obligation to satisfy the Court, by furnishing necessary information and any failure in that regard would entail in rejection of the application under Section 25 (2) of the Act."

18. In Kota Sivarama Prasad Vs. Shaik Mastan Vali and another⁵, the Hon'ble High Court held that,

A debtor cannot be declared as insolvent, unless he establishes satisfactorily by conclusive prove that he is unable to pay debt.

4 2002 (3) ALD 456

5 2014 (3) ALT 602

19. In Chittineni Mobana Rao Vs Jagarlmudi Subbarao⁶, the Hon'ble High Court held that,

the proposed insolvent has only to satisfy the court as to existence of prima facie grounds which in turn must disclose that the assets held by him are not adequate to meet the liabilities.

20. In T.Chandraskharaiah Vs. D.Sreramulu Chetty and others⁷, the High Court was pleased to examine the provisions of Insolvency Act extensively with emphasizing on Sec.10 and Sec.24 of the Provincial Insolvency Act. Ultimately, it was held that, even though the petitioner, who seeks himself to be declared as an Insolvent need not prove his case beyond reasonable doubt, but he should lead evidence and or place prima facie material before the Court, so as facilitate the Court to reach to conclusion that he is an Insolvent. He should place all such material before this court which would prima facie show that there exists grounds to believe that he is unable to discharge the debts of the respondents, and he became insolvent.

21. On the touchstone of the above legal principles, this Court now proceeds to test the case of the petitioner/debtor. It is the case of petitioners that the first petitioner is the proprietrix of Manasa Sri

6 2010 (6) ALD 514

7 2005 (1) ALT 407

Enterprizers, the second petitioner is her authorized agent and the first petitioner did business for chilies and byproducts with several branches. Further, it is their case that due to the COVID-19 pandemic and national wide lock down, their business collapsed and sustained heavy losses, and finally, they closed the business.

22. On the other hand, the 13th respondent admitted that Manasa Sri Enterprizers used to do business of food items with several branches but strenuously denied sustaining losses. It is his specific case that the petitioners showed their kith and kin as some of the respondents for false amounts with the intention to evade the amount indebted to the 13th respondent. Further, it is his case that the petitioners owned several movable and immovable properties, but they suppressed the same in the present I.P.

23. In view of the rival contentions of both parties and the above point, the burden of proof is undoubtedly on the petitioners to prove debts and liabilities exceed properties. In order to prove the same, the second petitioner examined himself as PW1. He reiterated the averments of petition in his chief examination affidavit. 13th Respondent cross examined him. In the cross-examination, he admitted that Item Nos. 1 to 3 of petition B1-schedule are situated in Guntur Municipal Corporation Limits, but he does not remember their values.

24. Besides the above, petitioners examined Vanipenta Krishna Reddy as PW2. He supported the case of petitioners by reiterating the averments of petition in his chief examination. 13th respondent cross-examined him. In the cross examination, PW2 testified that petitioners used to do mirch business; and that second petitioner has a water plant and his house situated at A.T. Agraharam, Guntur, and a vacant site at Gaddimalla, Srinivasa Rao Thota, Guntur. He pleaded ignorance about particulars of creditors to whom petitioners are indebted.

25. In addition to the above, the 13th respondent put his defence by way of suggestions. Of course, PWs 1 and 2 denied the same. Apart from oral evidence, petitioners relied upon documentary evidence, Exs.P1 and P2. Ex.P1 is the Bank statement of Punjab National Bank, dt. 15.9.2020. Ex.P2 is the Bank statement of DCB Bank, dt. 15.9.2020.

26. Except for the above oral and documentary evidence, the petitioners did not adduce any other evidence. To prove any fact, quality of evidence is required, but not quantity of evidence. Simply because Pws 1 and 2 alone are examined, their evidence cannot be brushed aside. This petition is filed to adjudge the petitioners as insolvent. Unless the act of insolvency described under Section 6 and the ingredients of Section 10 of the Act are established, the petitioners cannot be adjudged as insolvents. To prove the act of insolvency, the

petitioners shall establish that their debts and liabilities exceed properties. They described their debts and liabilities in the petition A-schedule. It is noteworthy to reproduce petition A-schedule hereunder:

'A' schedule

Sl.No.	Name	Nature of debt	Amount due in Rs.
1.	CPR Chillies, rep. by its Proprietor Chinnapu Reddy	Receipt	Rs.33,20,744-00
2.	Lakshmi Traders, rep. by its proprietor Srinivas Reddy	Receipt	Rs.4,13,802-00
3.	Nandipati Seetaiah & Son Co. General Merchants and commission agents, rep. by its Proprietor Chinka Krishna	Receipt	Rs.3,45,655-00
4.	Narendra Traders, rep. by its Proprietor Siva Reddy	Receipt	Rs.2,00,000-00
5.	Sai baba Trading Company, Chillies Merchants and commission agents rep. by its Proprietor Sambu Reddy	Receipt Cheque No.000602 of DCB Bank	Rs.3,00,000-00
6.	Sri Kanaka Durga Trading Company, General Merchants and commission agents rep. by its Proprietor Shekar	Receipt	Rs.3,31,474-00
7.	Srinivasa Traders, rep. by its Proprietor Sri Hari	Receipt	Rs.7,63,470-00
8.	Sri Radha Krishna Traders Company, General Merchants and commission agents, rep. by its Proprietor Manava Radha Krishna	Receipt, Cheque No.000656 of DCB Bank	Rs.12,60,370-00
9.	Sri Surya Sai Trading Company, General Merchants and commission agents, rep. by its Proprietor Srinivas	Receipt	Rs.2,00,000-00
10.	Vijaya Sankar Traders, General Merchants and commission agents, rep. by its Proprietor G. Veera Reddy	Receipt	Rs.2,38,834-00
11.	Lakshmi Gayatri Traders, General Merchants and commission agents rep. by its Proprietor Hanimi Reddy	Receipt	Rs.2,12,445-00
12.	Sri Uma Maheswara & Company, General Merchants and commission agents rep. by its Proprietor Tirumala Reddy	Receipt	Rs.10,52,968-00

13.	Somisetty Satyanarayana & Sons, Commission agents, rep. by its Proprietor Rajashekar Reddy	Receipt	Rs.3,63,023-00
14.	Sri Sai Srinivasa Chillies Traders, General Merchants and commission agents rep. by its Proprietor Karnati Srinivasa Rao	Receipt, Cheque No.000698 of DCB Bank	Rs.9,63,756-00
15.	Andhra Trading Company, rep. by its Proprietor Gopala Krishna	Receipt	Rs.11,32,641-00
16.	Sri Kalyani Traders, rep. by its Proprietor Venu Gopal Rao	Receipt	Rs.2,03,805-00
17.	Sri Venkateswara General Trading Company, rep. by its Proprietor Bala Swamy	Receipt	Rs.2,00,000-00
18.	Devisetty Mallaiah Sons, Commission agents rep. by its Proprietor Devisetty Bujji	Receipt	Rs.1,18,837-00
19.	Vuduta Subba Rao Son, General Merchants and commission agents rep. by its Proprietor Naga Malleswara Rao	Receipt, Cheque No.000697 of DCB Bank	Rs.5,32,511-00
20.	Gowri Sankar Trading Company Trading Company, General Merchants and commission agents rep. by its Proprietor Krishna	Receipt	Rs.2,80,134-00
21.	Kandimalla Sessaiah Sons, rep. by its Proprietor Ravi	Receipt	Rs.3,14,776-00
22.	Vijaya ai general Trading Company, rep. by its Proprietor G. Venkateswara Reddy	Receipt	Rs.5,49,999-00
23.	Bhajya Lakshmi Chillies Commission Agencies, rep. by its Proprietor Koteswara Rao	Receipt	Rs.8,80,762-00
24.	Matha Traders, General Merchants and commission agents rep. by its Proprietor Srinivasa Rao	Receipt	Rs.1,68,345-00
25.	New Sri Vijayadurga Traders, General Merchants and commission agents rep. by its Proprietor Mannava Govindha Rao	Receipt Cheque No.000700 of DCB Bank	Rs.22,81,581-00
26.	Kondepu China Venkateswarlu son rep. by its Proprietor A. Srinivasa Rao	Receipt	Rs.2,44,935-00
27.	M/s. M.N. Exporters, rep. by its Proprietor Dhalapathi	Receipt	Rs.1,00,000-00
28.	Sri Keerthi Enterprises, rep. by its	Receipt	Rs.39,000-00

	Proprietor Siva Reddy	Cheque No.000655 of DCB Bank	
29.	Universal Traders Company, General Merchants and commission agents rep. by its Proprietor Purushotam	Receipt Cheque no.000654 of DCB Bank	Rs.53,030-00
30.	Pamidi Enterprises commission agents rep. by its Proprietor Krishna Rao	Receipt Cheque No.000603 of DCB Bank	Rs.3,19,672-00
31.	Sri Vijayamaruthi Traders Chillies Merchants rep. by its Proprietor Chilaka Srinivasa reddy	Receipt	Rs.11,88,415-00
32.	Sivanaga Suresh Traders, General Merchants and commission agents rep. by its Proprietor Pidaparathi Srinivasa Reddy	Receipt	Rs.1,29,000-00
33.	Vijaya Vardhani traders, chillies Merchants rep. by its Proprietor Chilaka Srinivasa Reddy	Receipt	Rs.27,43,168-00
34.	Bramaramba Traders, General Merchants and commission agents rep. by its proprietor Lakkireddy Mohan Reddy	Receipt	Rs.3,13,555-00
35.	Sri Durga Bhavani chillies Traders, rep. by its Proprietor Koteswara rao	Receipt	Rs.11,03,025-00
36.	Kumara Swamy Gunnies Old & New Gunnies Merchants rep by its proprietor Teja	Receipt	Rs.50,000-00
37.	Rajan Traders, General Merchants and commission agents rep by its Proprietor S. Kishore Babu	Receipt	Rs.50,000-00
38.	Brahma Reddy	100 Rs.non-judicail stamp papers(4), Pronotes(4)	Rs.10,00,000-00
39.	Mule Krishna REdy	100 Rs. Non-judicial stamppapers (4), preonotes (4)	Rs.25,00,000-00
40.	Visamsetty Srinivasa Kumar	100 Rs. Non-judicial stamppapers (4), pronotes (4)	Rs.18,00,000-00
41.	Bajaj Finserv Rep. by its Branch Manager	Material papers of the financial services company	Rs.15,38,248-00
42.	IIFL Finance Ltd rep by its branch manager	Material papers of the financial services	Rs.17,25,840-00

		company	
43.	ICICI Bank Ltd rep. by its branch Manager	Material papers of Bank	Rs.9,38,898-00
44.	MAGMA Finance Corporation rep. by its branch Manager	Material papers of the financial services company	Rs.8,07,190-00
45.	DCB Bank	Mortgage bty deposit of title deeds	Rs.32,00,000-00 (Outstanding)
	TOTAL AMOUNT:		Rs.3,69,96,908-00

27. Admittedly, except for the above-stated oral and documentary evidence, the petitioners did not file any material, like counterfoil, receipts, etc., to show that they are indebted to respondents as stated above. But they furnished particulars of debts, such as particulars of creditors, nature of debt, quantum of amount, etc. The 13th respondent strenuously contended that some of the respondents are kith and kin of petitioners, and they were added to evade due amounts indebted to him. Except making such bald allegations, the 13th respondent did not furnish particulars of those respondents who are kith and kin of petitioners. Even in the cross-examination of PWs 1 and 2, the 13th respondent did not pose any question about who are kith and kin of the petitioners among the respondents. Even no suggestion was posed to PWs 1 and 2 in respect of his specific contention as well. Thus, he did not place any material to establish who is the kith and kin of petitioners among the respondents. Therefore, his contentions cannot be countenanced. Or

thorough scrutinizing the evidence on record, this court has not found any circumstances to disbelieve the petition A-schedule.

28. According to the petitioners, the first petitioner is the proprietrix, and second petitioner is her authorized agent and did business on her behalf. Now the question before the court is whether the first petitioner is liable for the debts contracted by the second petitioner on her behalf. Explanation to Sec. 6 of the Act answers this question. It reads as follows:

"Sec.6 : Act of Insolvency:

Explanation: For the purposes of this section the act of an agent may be the act of the principal."

29. It is crystallized from the above explanation that the acts of the agent may be act of the principal. In the present case also, the second petitioner, who is authorized agent of first petitioner, contracted loans with respondents on behalf of the first petitioner. Therefore, the first petitioner is liable for the debts and the acts done by her agent (second petitioner). Therefore, the first petitioner is liable to pay A-schedule debts.

30. In so far as liability of second petitioner is concerned, petitioners themselves admitted in their pleadings that second petitioner is authorized agent of first petitioner under registered G.P.A. It is worthwhile to reproduce relevant portion of pleadings hereunder:

"The 2nd petitioner is the authorized signatory of the 1st petitioner, through a Regd. GPA No.19 of BK IV of 2017 SRO Nallapadu, dt.27.2.2017."

31. Similarly, PW1 admitted in his chief examination affidavit that he is authorized agent of the first petitioner. It is noteworthy to reproduce relevant portion of evidence of PW1 hereunder:

"I am herewith represent my mother, who had executed a General Power of Attorney Regd. GPA No:19 of BK IV of 2017 SRO Nallapadu, Dt.27.2.2017 in my favour."

32. It reveals from the above pleadings and evidence that the second petitioner is authorized agent of the first petitioner under Regd. GPA No. 19 of BK IV of 2017 SRO Nallapadu, dt.27.2.2017. He did business and contacted debts on behalf of the first petitioner. Now the question before the court is whether the second petitioner is personally liable for those debts.

33. It is well settled that the agent is not personally liable for the debts contacted by him on behalf of his principal, unless there is a contract to the contrary. In the present case also, the second petitioner did business as an authorized agent of the first petitioner, but not in an individual capacity. Therefore, the second petitioner is not liable to pay the petition A-schedule debts. As he is not indebted to any respondents, he is not entitled to be adjudged as insolvent. However, it is established that the first respondent is indebted rupees three crores and odd to the respondents.

34. Simply establishing the fact that the first petitioner is indebted a huge amount does not suffice to adjudge her as insolvent unless her properties are less than her liabilities. She showed her properties in B-schedule. Immovables, bank sureties, cash on hand, and movables were shown in petition B2 to B5 schedules. The total value of her property is Rs. 1,00,06,678/-. 13th respondent strenuously contended that petitioners have valuable movable and immovable properties, but they screened the same. Except for such a bald allegation, he did not furnish particulars of those properties, such as nature of property, location, etc. Unless these things are described and proved, this contention cannot be believed. More over, he did not place any material, including documentary evidence, to substantiate his plea. Therefore, his bald allegations cannot be taken into consideration.

35. On thorough scrutiny of evidence and material on record, this court has no reason to believe that the petitioner has any other properties other than B1 to B5 schedules. The value of B1 to B5 schedules is Rs. 1,00,06,678/-. Whereas, her debts and liabilities are Rs. 3,69,96,908/-. It shows that debts and liabilities of first petitioner exceed her properties. Thereby, she complied with mandatory requirements under Section 10(1) of the Act to adjudge her as insolvent.

36. In the light of the aforesaid facts and circumstances, it is held that the first petitioner is entitled to be adjudged as insolvent. Accordingly, this point is answered.

37. In the result, the petition is partly allowed against respondents 1 to 40 by adjudging the first petitioner as insolvent by giving her six months to discharge. All her properties are vested with the Official Receiver to deal with them according to the provisions of the Provincial Insolvency Act, 1920. The office is directed to send a copy of this order to the District Collector, Guntur, for Gazette publication in compliance with Sec. 30 of the Provincial Insolvency Act.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the Open Court, on this the 1st day of July, 2024.

Y. GOPALA KRISHNA,
I Addl. Civil Judge (Senior Division),
Guntur.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Petitioners:-

P.W.1 : Annem Maladri Reddy
P.W.2 : Vanipenta Krishna Reddy

For Respondents:-

D.W.1 : Yenimireddy Bulli Reddy

DOCUMENTS MARKED

For Petitioners:-

Ex.A1 : Bank statement of Panjab National bank dt.15.9.2020
Ex.A2 : Bank statement of DCB Bank, dt.15.9.2020.

For Respondents:-

Nil

Y. GOPALA KRISHNA,
I Addl. Civil Judge (Senior Division),
Guntur.

Dis No - 2340